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THE RIVERSIDE HISTORY
OF THE
UNITED STATES

WILLIAM E. DODD, EDITOR

THE RIVERSIDE HISTORY OF THE UNITED STATES

WILLIAM E. DODD, EDITOR

I. **BEGINNINGS OF THE AMERICAN PEOPLE.** By CARL LOTUS BECKER, Professor of Modern European History, Cornell University.

II. **UNION AND DEMOCRACY.** By ALLEN JOHNSON, Professor of American History, Yale University.

III. **EXPANSION AND CONFLICT.** By WILLIAM E. DODD, Professor of American History, University of Chicago.

IV. **THE NEW NATION.** By FREDERIC L. PAXSON, Professor of History, University of Wisconsin.

HOUGHTON MIFFLIN COMPANY

From the original portrait by Stuart, at Bowdoin College.

Th. Jefferson

UNION AND DEMOCRACY

BY

ALLEN JOHNSON

PROFESSOR OF AMERICAN HISTORY

YALE UNIVERSITY

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PREFACE

THE title of this volume must be regarded as suggestive rather than as strictly accurate, for the beginnings of union are to be found farther back than 1783, and democracy in its largest sense has even yet been only imperfectly realized. At the close of the Revolution, union was but a name. What Metternich said of the Italy of his day might have been said of the United States in 1783: it was only a geographical expression. The formation of the new federal union under the Constitution is properly the main, though not the sole, theme of this volume. Behind the thirteen Atlantic communities lay a vast region which almost at once invited the colonizing activities of the people. The rise of this western world is a movement of immense significance. Out of the bosom of the West emerged the new democracy which transformed the face of society in the old States. Whether viewed economically or politically, this forms the second theme in any history of the times. Around these two movements, therefore, I have endeavored to group the events of forty-five years.

Within the last few years special studies have added much to the common stock of historical information, and in many ways effected changes in the historian's point of view. The time seemed proper to restate the salient factors in the history of this formative period. I have frankly appropriated the

labors of others. Had the plan of the series permitted the use of footnotes, I would gladly have made particular acknowledgment of my indebtedness. At the same time I have not hesitated to present the results of my own studies where they have led away from the conventional view of men and events.

In preparation of the maps showing the popular vote in the elections of 1800 and 1824, I have drawn largely upon the data which Dr. Charles O. Paullin, of the Carnegie Institution, has generously put at my disposal. In States where the presidential electors were not chosen directly by the voters, other votes, such as those for governor, have been made the basis for determining the popular choice among party candidates for the presidency. Two of my graduate students, Miss Isabel S. Mitchell and Mr. Joseph E. Howe, have given me valuable assistance in the execution of the maps. I am under particular obligation to my colleague, Professor Stewart L. Mims, for reading critically both manuscript and proof.

ALLEN JOHNSON.

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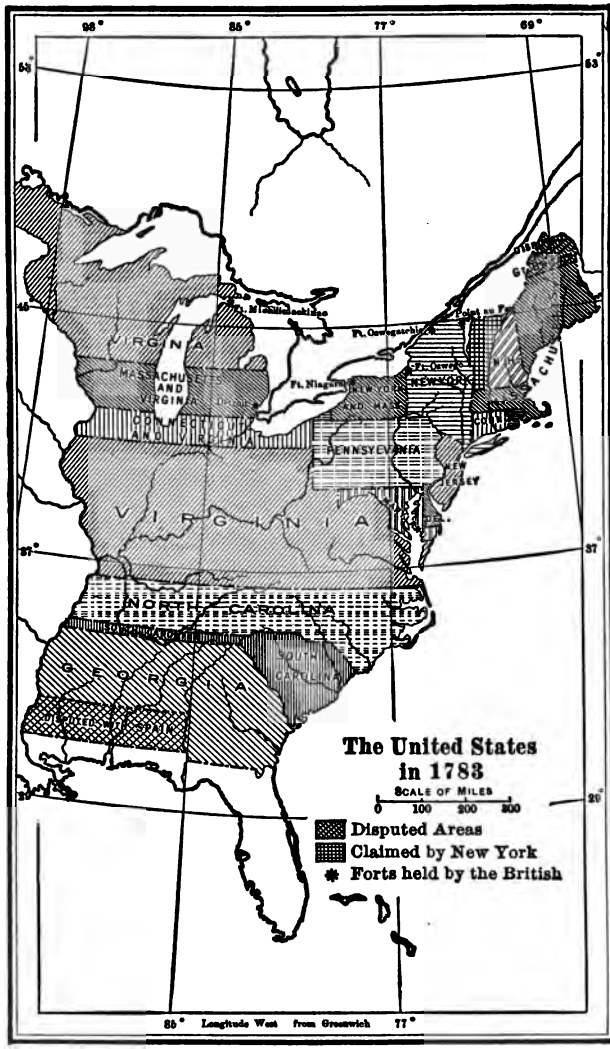
UNION AND DEMOCRACY



The United States in 1783
SCALE OF MILES
0 100 200 300
Disputed Areas
Claimed by New York
Forts held by the British
VIRGINIA
MASSACHUSETTS AND VIRGINIA
CONNECTICUT AND VIRGINIA
NEW YORK AND MASS.
PENNSYLVANIA
NEW JERSEY
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
DISPUTED WITH SPAIN
Ft. Oswegatchie
Ft. Niagara
Ft. Michilimackinac
Point au Fer
Longitude West from Greenwich

UNION AND DEMOCRACY

CHAPTER I

THE ORDEAL OF THE CONFEDERATION

It was characteristic of the people of the United States that once assured of their political independence they should face their economic future with buoyant expectations. As colonizers of a new world they were confident in their own strength. When once the shackles of the British mercantile system were shaken off, they did not doubt their ability to compete for the markets of the world. Even Washington, who had fewer illusions than most of his contemporaries, told his fellow citizens of America that they were "placed in the most enviable condition, as sole lords and proprietors of a vast tract of continent, comprehending all the various soils and climates of the world, and abounding with all the necessaries and conveniences of life." Independence was the magic word which the common man believed would open wide the gates of prosperity. Yet within a year after the ratification of the Peace of Paris, American society was in the throes of a severe industrial depression.

Contrary to the accepted view, the latter years of the war were not years of penury and want among the people. Outside of those regions of Virginia and

the Carolinas, which were devastated by the marching and countermarching of the combatants, the people were living in comparative comfort. North of the Potomac, indeed, there was even a tendency to speculation in business and extravagance in living. Throughout the war farmers had found a ready market for their produce within the lines of the British and French armies. The temporary suspension of commerce had encouraged many forms of productive industry. As the war continued, venturesome skippers eluded British men-of-war and found their way to European or Dutch West India ports, bringing home rich cargoes in exchange for tobacco, flour, and rice. The prizes brought in by privateers added largely to the stock of desirable and attractive merchandise in the shops of Boston, Philadelphia, and Charleston. If such prosperity could follow in the wake of war, what commercial gains might not be expected in the piping times of peace? In anticipation of immediate returns, merchants drew heavily upon their foreign creditors and stocked their shops with imported commodities. Southern planters indulged similar expectations and bought land and slaves on credit, regardless of the price. "A rage for running in debt became epidemical," wrote a contemporary observer. "Individuals were for getting rich by a *coup de main;* a good bargain — a happy speculation — was almost every man's object and pursuit."

During the hard times of 1785–86 these golden dreams vanished. Instead of sharing as the people of an independent nation in the trade and commerce

of the world, American shippers found themselves no better off than they were as dependents of Great Britain. Orders in council at once closed the ports of the British West Indies to all staple products which were not carried in British bottoms. Certain commodities, — fish, pork, and beef, — which might compete with the products of British dependencies, were excluded altogether. The policy of France and Spain was scarcely less illiberal. The effect was immediate. Cut off from their natural markets, American shipowners were forced either to leave their vessels to rot at their wharves or to seek new markets. For months there seemed to be no other alternative. At the same time the new industries which had sprung up during the war had to meet the shock of foreign competition, as the British manufacturer dumped on American wharves the accumulated stock of his warehouses. The plight of the small farmer and of the large planter was much the same; for both had incurred debts in expectation of continued prosperity.

Everywhere people complained of hard times. Discouragement and ill-humor displaced the buoyant optimism with which peace had been heralded. "What is independence?" asked a writer in *A Shorter Catechism.* "Dependence upon nothing" was the cynical answer. In many States the popular discontent found vent in a vindictive crusade against the Tories. Even sober-minded citizens shared the general detestation of these unfortunate people. In the heat of war Washington had declared them to be "abominable pests of society" who ought to be

hanged as traitors. The States had quite generally confiscated their property and in some cases had passed acts of attainder against them. In communities like New York, which had long remained in the hands of the British, the popular animosity was exceedingly bitter. To aid those citizens who had been dispossessed of their estates, the legislature passed the Trespass Act, which permitted suits for the recovery of property that had passed into the hands of the enemy upon the flight of the owners. The terms of the act were in flat contradiction to the treaty of peace. Further to aid claimants, it was provided that no military order could be pleaded in court in justification of the seizure of property.

In a famous case brought before the Mayor's Court of New York by the widow Rutgers to recover her property from Joshua Waddington, a wealthy Tory, Alexander Hamilton appeared as counsel for the defendant. It was a daring act which brought down upon him the unmitigated wrath of the radical elements. Nevertheless, in an opinion which has considerable interest for students of constitutional law, the court ruled that the Trespass Act, "by a reasonable interpretation," must be construed in harmony with the treaty of peace, which was obligatory upon every State. It was not to be presumed that the legislature would intentionally violate the law of nations. The judgment of the court, therefore, was in favor of the defendant. With chagrin and resentment the popular party declared that the court had set aside a law of the State and had presumed to set itself above the legislature. Wher-

ever the radicals got the upper hand, confiscation was the order of the day; and even where the conservatives succeeded in restraining their radical brethren from legislative reprisals, no Tory was safe from the assaults of irresponsible mobs. Thousands took refuge in flight, to the infinite delight of the wits in the coffee-houses who jested of the "Independence Fever" which was carrying off so many worthy people.

Financially the Confederation was hopelessly embarrassed. Having sowed the wind by its issues of bills of credit, it was now reaping the whirlwind. By the end of the war this paper money had so far depreciated that it ceased to pass as currency. "Not worth a continental" has passed into our native idiom. Without power to levy taxes, Congress could only make requisitions upon the States. The returns were pitifully inadequate to the needs of government. All told, less than a million and a half of dollars came into the treasury between 1781 and 1784, although Morris, as Superintendent of Finance, had earnestly besought the governors of the States for two millions for the year 1783 alone, in order to meet outstanding obligations and current expenses. Without foreign and domestic loans the war could never have been carried to a successful conclusion; but in 1783 even that source was drained. In sheer desperation Congress authorized the Superintendent of Finance to draw bills of exchange, at his discretion, upon the credit of loans *which were to be procured* in Europe. In vain Morris warned Congress that no more loans could be secured. "Our public credit is gone," he declared.

The obvious remedy for the financial ills of the Confederation was to give Congress the power to levy taxes. Early in 1781, indeed, before the Articles of Confederation had been ratified by Maryland, the proposal had been made that Congress should be vested with power to levy a five per cent duty on imports; but the obstinate opposition of Rhode Island effectually blocked the amendment. "She considered it the most precious jewel of sovereignty that no State be called upon to open its purse but by the authority of the State and by her own officers." Again, in 1783, Congress submitted to the States an amendment which would confer upon it the power to place specific duties for a term of twenty-five years upon certain classes of imported commodities. The tardy response of the States to this proposal left little hope that it would be adopted.

In fact, the Confederation and its woes hardly occupied the thoughts of the people at all, except as a subject for jest and ridicule. The newspapers made merry over the peregrinations of Congress. Frightened away from Philadelphia by the riotous conduct of some troops of the Pennsylvania line, who had imbibed too freely, the delegates had withdrawn first to Princeton and then to Annapolis. Thither Washington repaired to resign his commission; but even so notable an occasion as this brought together delegates from only seven of the States. The best talent in America was drafted into the service of the several States. Men had ceased to think continentally. "A selfish habitude of thinking and reasoning," wrote one who styled himself Yorick, in the

New York Packet, "leads us into a fatal error the moment we begin to talk of the interests of America. The fact is, by the interests of America we mean only the interests of that State to which property or accident has attached us." "Of the affairs of Georgia," Madison confessed in 1786, "I know as little as those of Kamskatska."

On all sides intelligent men agreed that the return of prosperity depended upon the opening-up of foreign trade. Their immediate concern was the recovery of old markets. When John Adams went to London in 1785 as the first representative of the United States, he bent all his energies to the task of securing a commercial treaty which would provide for unrestricted intercourse between the countries. It was an impossible task. At every turn he encountered the hostility of the mercantile classes, of whom Lord Sheffield was the most conspicuous representative. "What have you to give us in exchange for this and that?" "What have you to give us as reciprocity for the benefit of going to our islands?" "What assurance can you give that the States will agree to a treaty?" These were the embarrassing questions which Adams had to encounter. Baffled by the cool indifference of the English Ministry, Adams wrote home in despair that there was not the slightest prospect of relief for American commerce unless the States would confer the power of passing navigation laws upon Congress or themselves pass retaliatory acts against Great Britain.

Congress had, indeed, already urged upon the States the necessity of yielding the power to enact

navigation laws; but they had replied with such deliberation and with so many conditions that Congress was as powerless as ever. Meantime, each State struck blindly at the common enemy with little or no regard for its neighbors. "The States are every day giving proofs," wrote Madison, "that separate regulations are more likely to set them by the ears than to attain the common object." When the other New England States closed their ports to British shipping, Connecticut hastened to profit at their expense by throwing her ports wide open. New Jersey, with New York on one side and Pennsylvania on the other, was likened to a cask tapped at both ends. To find a historical parallel to the annals of this period, one must go back to the bickerings and jealousies of the states of ancient Greece.

In this dark picture, however, there are cheering rays of light. One by one the States were redeeming their promises and ceding their western lands. It seemed as though the Confederation, hitherto a disembodied spirit, was about to tenant a body. By the year 1786 the United States were in joint possession of the greater part of the vast region between the Ohio, the Mississippi, and the Great Lakes — a domain of imperial dimensions. In anticipation of these cessions, Congress took under consideration an ordinance reported by a committee of which Thomas Jefferson was chairman. This ordinance contemplated the division of the land north of the thirty-first parallel into fourteen or sixteen States. The settlers in these rectangular areas were not to form state governments at once, but for their

temporary government were to borrow such constitutions as they thought best from the older States. When a State had twenty thousand inhabitants, it might frame a permanent constitution and send a delegate to Congress. Admission to the Union was to be granted only when a State had as many free inhabitants as "the least numerous of the thirteen original States." Two features of Jefferson's report do not appear in the Ordinance of 1784; the fantastic names which Jefferson had selected and the fifth of the fundamental conditions which were to be a charter of compact between the old States and the new. It is perhaps no misfortune that the names Assenisipia, Polypotamia, Pelisipia, do not appear on the map; the article prohibiting slavery after the year 1800 might well have been retained.

More important than the Ordinance of 1784, which indeed is interesting chiefly because it was the forerunner of the final ordinance for the Northwest Territory, is that adopted by Congress in the follow-

ing year. The so-called Land Ordinance of 1785 provided in general for the survey of a series of townships six miles square in the region immediately west of Pennsylvania, and for the further division of each township into thirty-six lots, or, as they were later styled, "sections," one mile square. After satisfying the claims of the soldiers of the Continental Army, Congress proposed to distribute these lands among the States, to be sold at auction for a minimum price of one dollar an acre, reserving certain sections in each township and one third of the mineral ore which might be found. The sixteenth section in each township was to be set aside for the support of education. Each purchaser was to receive with his deed a definite description of his holding. Subsequent amendments to the Land Ordinance made the terms of purchase somewhat easier. Instead of making an out-and-out purchase, prospective settlers might pay one third in cash and receive a credit of three months for the balance of the purchase price. Yet even with these inducements only seventy-three thousand acres had been sold to individuals down to 1788. The hazards of western settlement were still too great.

Disappointed in the sales under the Land Ordinance, Congress was persuaded to consider the alternative course of selling large tracts to companies. The collapse of national credit left the public domain almost the only available source of revenue. Early in 1787 the Ohio Company offered to purchase a tract of land between the Ohio and Muskingum Rivers. The promoters of this company had

been interested in an earlier project of army officers for the founding of a military colony beyond the Ohio. Organized at Boston in March, 1786, with a nominal capital of one million dollars, it had within a year raised one fourth of that amount and sent first General Samuel Parsons and then the Reverend Manasseh Cutler to secure the desired grant from Congress. The labors of this astute divine at the seat of government form an interesting chapter in the evolution of American legislative methods. By devices well known to the modern lobbyist he not only secured the grant of land, but also took a hand in the shaping of a new ordinance for the Northwest Territory. In order to secure the grant to his associates, he had to resort to log-rolling and agree to procure for a group of land speculators an option to lands on the Scioto River. The grant to the Ohio Company contained a million and a half acres; that to the Scioto Company, five million acres. But while the one paid down half a million dollars, the other made no payment, expecting to dispose of their "rights" before the first payment was due. In the following year a third grant of a million acres on the Great and Little Miami Rivers in Ohio was made to John Cleve Symmes.

From these sales Congress expected to realize over three and a half million dollars in public securities and at the same time to satisfy military bounty warrants amounting to about eight hundred thousand acres. The actual amount realized was less than six hundred thousand dollars. The Scioto Company succeeded in disposing of rights to about three million

acres to a company organized in France, which in turn sold them to unsuspecting royalist emigrants. Neither company ever secured a clear title to these lands, and Congress had eventually to come to the relief of the unhappy French settlers with a donation of twenty-four thousand acres. Unforeseen circumstances prevented either the Ohio Company or Symmes from complying with the conditions of sale; and in both cases Congress consented to alter the terms of contract.

On July 13, 1787, Congress adopted the ordidance which it had long had under consideration. The authorship of this "charter of the west," after long controversy, is still in dispute. Like all legislative measures it bears the mark of many hands. Certain features of Jefferson's ordinance reappear: the provision for temporary government and eventual statehood, and the fundamental articles of compact. Other provisions are stated in a detailed fashion and suggest the probability that Congress had definite conditions to meet. The ordinance took final form while the Reverend Manasseh Cutler was representing the Ohio Company in New York. Perhaps the most striking departure from the Ordinance of 1784 is the provision for not less than three nor more than five States north of the Ohio, where Jefferson planned for ten. Admission to the Union was to be gained only after the population had reached sixty thousand. Temporary government was to consist of a governor, a secretary, and three judges appointed by Congress, who were to adopt such laws from other States as they believed suited to local conditions. In each and

every case Congress reserved the right to disallow these laws. Whenever a territory attained a population of five thousand, it was to pass to the second grade of government, with a representative assembly, an appointive council, and a delegate in Congress.

Six articles of compact were also written into the ordinance, which were to remain forever unalterable except by the common consent of the parties thereto — "the original States and the people and States in the said territory." Freedom of worship, the usual rights of person and property, and the obligation of private contracts were guaranteed. Religion, morality, and education were to be forever encouraged. Neither slavery nor involuntary servitude was to be permitted. In imposing these conditions Congress undoubtedly exceeded its powers under the Articles of Confederation, for that document nowhere confers upon Congress the power to make binding contracts, nor for that matter to legislate in any wise for the government of the common domain.

The Ohio Company hastened to colonize its broad acres on the Muskingum. Before the end of the year 1787, the vanguard of the first colony was on the march through Pennsylvania to the upper waters of the Ohio. There they spent the winter constructing the craft which was to carry them to their destination. As soon as the ice broke up in the spring, they embarked on the Mayflower, — for so they had christened the craft, — and within five days set foot on the soil of Ohio. Other bands joined them, and by midsummer their rude huts and a blockhouse marked the site of what was to be the town of Marietta, the

first New England settlement in the West. Across the Muskingum, at Fort Harmar, the new governor, General St. Clair, had already taken up his official residence. Farther down the river, Symmes planted a colony from New Jersey on the tract which he had purchased; and within the next few years settlements were made in the adjoining district, which Virginia had reserved as bounty land for her soldiers. The vision of virgin lands in the Ohio country was beginning to dawn upon the small farmer of the East. Emigration grew apace. Between February and June, 1788, an observer noted not less than forty-five hundred settlers drifting past Fort Harmar in their flatboats, in search of new homes in the wilderness.

While the colonization of the Northwest was going on under the eye of Governor St. Clair, hardy pioneers were laying the foundations of a new society in the Southwest, without the protecting arm of the Government. Before the war Daniel Boone had made his famous trace to "the country of Kentucke" through the Cumberland Gap; and Robertson had led his colony from North Carolina to the upper waters of the Tennessee. Settlers had followed the long-rangers; and numerous communities sprang up by salt lick and water course. In all these settlements there was much local independence. For a time the people on the Watauga had established a government of their own. Upon the cession by North Carolina of her western lands, the settlers of eastern Tennessee took matters into their own hands and prepared to organize as a State. Congress had just adopted the Ordinance of 1784, and one of Jeffer-

son's prospective States included most of the land already appropriated by these pioneers. They nourished, too, long-standing grievances. They were taxed for the support of a government which treated them with contumely and ignored their administrative needs. The movement toward independence acquired such headway that not even the repeal of the act of cession by North Carolina could stay its course. With a confidence born of frontier conditions these "modern Franks, the hardy mountain men," as a contemporary called them, drafted a constitution, organized a government, and appealed to Congress for recognition as a State of the Confederation. For three years the State of Franklin, as it was officially christened, under the able leadership of Governor John Sevier, refused to recognize the authority of North Carolina, even to the point of resisting the militia by arms. But Congress turned a deaf ear to the petitions of the insurgents; and in the year 1788, diplomacy succeeding where coercion had failed, the people of Franklin returned to their first allegiance.

Much the same centrifugal forces were at work in northwestern Virginia and western Pennsylvania, a region which felt its isolation keenly. "Separated by a vast, extensive and almost impassible Tract of Mountains, by Nature itself formed and pointed out as a Boundary between this Country and those below it," the settlers of this trans-Alleghany region besought Congress to recognize them as a "sister colony and fourteenth province of the American Confederacy."

More menacing to the integrity of Virginia was a

movement for independent statehood among the people of Kentucky. Rivers were the highways of their commerce and the current of all bore their flatboats away from the parent State. New Orleans was their inevitable *entrepôt*. The forces of nature seemed to conspire to throw these western settlements into the hands of Spain. Washington was deeply impressed by the necessity of connecting the headwaters of the James and the Potomac with the tributaries of the Ohio, if the trade and allegiance of the people of Kentucky were to be secured to Virginia and to the Union. "The western States," he wrote to Governor Harrison of Virginia, "stand as it were upon a pivot. The touch of a feather would turn them any way." The situation in Kentucky became more acute as intimations reached the people that John Jay was proposing to renounce the free navigation of the Mississippi.

In the summer of 1785, Don Diego de Gardoqui, the first accredited Minister from Spain, arrived in the United States to settle all outstanding differences between the two countries. Congress appointed John Jay as its diplomatic agent and instructed him to hold insistently to the thirty-first parallel as the southern boundary of the States and to the free navigation of the Mississippi. The prospect of agreement was very slight. The American claims were based solely on the Treaty of 1783 which the King of Spain was determined not to recognize. Negotiations dragged on for months. Reporting to Congress in August, 1786, Jay advised the abandonment of the claim of free navigation of the Mississippi for

the sake of securing an advantageous commercial treaty with Spain. The delegates from Northern States were ready to barter away the Southwest; but the Southern delegates succeeded in postponing action until the impotent Confederation gave way to a more perfect union.

At the Court of St. James, John Adams was having no better luck in pressing the rights of the moribund Confederation. Notwithstanding the explicit terms of the Treaty of 1783, British garrisons still held strategic posts along the Great Lakes, exercising a strong influence upon the Indians and guarding the interests of British fur traders. Such a situation would have been intolerable to a self-respecting nation. Smothering his pride, Adams mustered all the diplomacy which his nature permitted and sought an explanation of this extraordinary conduct from the ministers. He was finally told that he need not expect Great Britain to relinquish the Western posts so long as the States continued to put obstacles in the way of the collection of British debts.

A general reluctance to meet financial obligations was a deplorable aspect of the depression to which American society had succumbed. In all the States there was a more or less numerous class of debtors who were convinced that the Government could help them out of all their distresses. As the cause of all their woes was the scarcity of money, why, let the Government manufacture money and so put an end to the stringency. What Madison called "the general rage for paper money" seized upon Rhode Island, New Jersey, Pennsylvania, the Carolinas, and

Georgia. Coupled with paper-money acts were others designed to alleviate the distress of the unfortunate. Stay laws of one sort or another were devised to keep the wolf, in the guise of the sheriff, from the door. Legal-tender acts made cattle and produce equivalent to money when offered in payment of debts. Nor was this legislation inspired altogether by dishonest intent. Many believed with Luther Martin, of Maryland, that there were times of great public distress and extreme scarcity of specie when it was the duty of the Government to pass stay laws and legal-tender acts, "to prevent the wealthy creditor and the moneyed man from totally destroying the poor, though even industrious, debtor."

No State suffered more from the paper-money aberration than Rhode Island. Under pressure from the radical elements the legislature passed an act for the emission of bills of credit which were to be issued to any freeholder who would offer as security real estate of any sort to double the amount of the loan. "Many from all parts of the State made haste to avail themselves of their good fortune, and mortgaged fields strewn thick with stones and covered with cedars and stunted pines for sums such as could not have been obtained for the richest pastures." But when they sought their creditors, not a merchant nor a shop-keeper could be found. Nobody wished to have a just debt discharged in such currency. Not to be thwarted in their purpose, the radicals then enacted a law which threatened with a summary trial and a heavy fine any one who refused to accept paper money in payment of debt.

Under this Force Act, one John Weeden, a butcher, was brought to trial for refusing to receive the paper offered by a customer in payment for meat. To the discomfiture of the legislature the court refused to enforce the law in this instance, on the ground that the statute was contrary to the constitution of Rhode Island; and when summoned before the legislature to answer for their defiance, the judges boldly stood their ground. The case of *Trevett* v. *Weeden* was not without its lesson to those who were casting about for ways and means to defend property from the assaults of popular majorities. In Virginia, too, the highest state court, in the case of *Commonwealth* v. *Caton*, boldly asserted the right of the judiciary to declare void such acts of the legislature as were repugnant to the constitution.

Meantime the debtor and creditor classes in Massachusetts were locked in a struggle which menaced the peace of the country. Here as elsewhere hard times had forced the small farmers of the interior counties to the wall. No doubt their difficulties were caused in part by their own improvidence, but they were increased by the prevailing scarcity of money. So dire was the want of a medium of exchange that many communities resorted to barter. The editor of a Worcester paper advertised that he would accept Indian corn, rye, wheat, wood, or flaxseed, in payment of debts owed to him, up to the amount of twenty shillings. It seemed to the ignorant farmer that his creditors were taking an unfair advantage of circumstances in demanding currency to settle debts which had been contracted when money was

abundant. The law, however, favored the creditor. The jails were filled to overflowing with men imprisoned for debt; the courts were overwhelmed with actions. In Worcester County, with a population of less than fifty thousand people, there were in 1784 two thousand cases on the docket of the Inferior Court of Common Pleas. In this age of litigation only one class appeared to thrive — the lawyers. The anger of the poor debtors, inflamed by attachments and foreclosures, vented itself upon the ostensible cause of their misfortunes. The excessive costs of courts and the immoderate fees of lawyers are grievances which bulk large in every indictment drawn by town meeting or county convention. Young John Quincy Adams, then a senior in Harvard College, was so affected by the odium which had fallen upon the practice of law that he was almost ready to abandon the career which he had chosen.

The adjournment of the General Court in July, 1786, without authorizing an issue of paper money or passing a legal-tender act or fixing the fees of lawyers and the costs of courts, contributed to the unrest which was now assuming a threatening aspect. During August and September riotous mobs prevented the courts from sitting at Northampton, Worcester, Great Barrington, and Concord. Alarmed by these disorders Governor Bowdoin convened the legislature in special session and summoned the militia to the protection of the capital. While the legislature was devising ways and means of allaying the public excitement, another demonstration oc-

curred at Worcester which resulted in the dispersion of the Court of General Sessions by a force of armed men. From Worcester the disorders spread into adjoining counties; and something like a concerted movement upon Boston and Cambridge seemed to be preparing. The prompt action of the state authorities, however, balked the plans of the insurgents. The main body of insurgents under Shays scattered; but a month later they rallied around Springfield to prevent the holding of court. Governor Bowdoin then dispatched troops, four thousand strong, under the command of General Lincoln, to the assistance and protection of the civil authorities. A civil war seemed imminent. Shays had planned an attack upon the national arsenal at Springfield, but he could not bring his rustics to act together. Before the determined resistance of the local militia his undisciplined troops broke and fled. The arrival of the state militia under Lincoln completed the demoralization of Shays' army. Retreating through the hilly country of Hampshire, they were finally overtaken and routed at Petersham. Some of the insurgents went to their homes, completely humbled and subdued; others fled across the border to await better times; and still others, unrepentant and unsubdued, continued to harass the countryside. It was not until the following September that Governor Bowdoin ventured to disband the militia.

To these disturbances in Massachusetts, Congress had not remained indifferent. Aside from the direct interest that all members were bound to take in a

rebellion which seemed to threaten the very foundations of a sister State and which might easily recur in their own, Congress was concerned for the fate of the national arsenal at Springfield. But no forces were available for the protection of the property of the Confederation. The few hundred men who comprised the army were scattered in garrisons along the western frontier. Acting as intermediary between Congress and Governor Bowdoin, General Knox as Secretary of War made what provision he could for the defense of the arsenal by local militia; but these measures were confessedly inadequate. Upon his report Congress was finally moved to increase the army, ostensibly for the protection of the frontier, where in truth Indian hostilities required the presence of additional troops. As these forces would be raised chiefly in New England, they could be employed first to protect Springfield. Any open avowal of this plan was avoided, however, lest the insurgents should take alarm and immediately attack the arsenal. But these plans were wrecked on the reef of financial bankruptcy. Congress could only supplicate the States for money and borrow what it might on its expectations. Recruiting went on so slowly that the rebellion was practically over when two companies of artillery, numbering seventy-three men each, which had been raised in Massachusetts, were finally marched to Springfield. All the other recruits were dismissed. The inefficiency of Congress and its want of moral influence were self-confessed.

In his famous circular letter of 1783, Washington had spoken of the times as a period of "political pro-

bation." The moment had come for the United States to determine, said he, "whether they will be respectable and prosperous, or contemptible and miserable, as a nation." Three years had now passed and the period of probation seemed to have ended in the ruin of national hopes. The events of the years 1786 made a profound impression upon the minds of all responsible and conservative men. In undisguised alarm, Washington wrote: "There are combustibles in every State which a spark might set fire to. . . . I feel . . . infinitely more than I can express to you, for the disorders which have arisen in these States. Good God! Who, besides a Tory, could have foreseen, or a Briton, predicted them?" Rightly or wrongly, men of the upper classes believed that the foundations of society were threatened and that the State Governments would fall a prey to the radical and unpropertied elements, unless a stronger Federal Government were created. "With this idea, they are thinking, very seriously," wrote an interested observer at the seat of Federal Government in New York, "in what manner to effect the most easy and natural change of the present form of the Federal Government to one more energetic, that will, at the same time, create respect, and secure properly life, liberty, and property. It is, therefore, not uncommon to hear the principles of government stated in common conversation. Emperors, kings, stadtholders, governors-general, with a senate or house of lords, and house of commons, are frequently the topics of conversation." There were those who frankly advocated a monarchical government as the only way of

escape from the ills under which American society was laboring. There is reason to believe that a project was on foot to invite Prince Henry of Prussia to become the head of a new consolidated government. The influence of the Order of the Cincinnati was much feared by friends of republican institutions. Individually members of the order did not hesitate to express their impatience with popular government. What was to come out of this political chaos, no man could tell.

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CHAPTER II

THE MAKING OF THE CONSTITUTION

NOTWITHSTANDING the manifold differences between State and State in the Confederation, there were everywhere groups of men who confronted much the same economic conditions. Between the farmer who tilled his sterile hillside acres in the interior of New England and the cultivator of the richer soil of the Piedmont in Virginia and the Carolinas, a greater identity of economic interests existed than the casual observer would have suspected. The feeling of hostility which circumstances bred in the followers of Daniel Shays toward the merchants of Boston was akin to that which the farmers of middle and western Pennsylvania harbored toward the aristocratic and wealthy classes of Philadelphia and the eastern counties. A similar antagonism appears between the yeomen of the uplands and the planters of the tidewater farther to the south, accentuated, no doubt, by religious and racial differences. The Scotch-Irish or German dissenter, who was treated with contempt as a foreigner and forced to support a church established by a State Government which discriminated against numbers and in favor of property, was not likely to feel kindly toward the tidewater aristocracy. Bad crops spelled disaster for these farmers, for they had incurred debt to purchase their lands and had borrowed capital to work them. In hard times

they were the first to suffer, for whether money was scarce or plentiful, the tax-collector and the money-lender knocked inexorably at their doors. Bad roads kept them isolated and want of intercourse bred much ignorance and prejudice in even honest men. Were the recorded grievances of these inland groups brought together, they would show a surprising agreement.

Set over against this interior population with predominant agrarian interests were those classes, urban for the most part, whose income was derived from personal rather than real property. Even at this time a capitalist class of no mean proportions existed. No inconsiderable part of this personalty was invested in shipping and manufacturing. A part, not easily determined, was tied up in Western lands, which appealed strongly to the speculative instincts of the American. The amount of money at interest was also considerable in States like Massachusetts. As creditors of the debt-burdened farmers these classes were everywhere on the defensive. To this group should be added the holders of public securities, both state and continental, who could not have remained uninterested witnesses of the demise of the Confederation.

The logic of events was drawing these holders of personal property together. Capitalists with idle money found the avenues to profitable investment closed by the inability of Congress to offer protection to either manufacturing or shipping; creditors with money at interest witnessed with alarm the inability or unwillingness of state legislatures to re-

sist attacks upon private contracts and public credit; holders of public securities shared the general contempt for a Government, which, so far from providing for the ultimate redemption of its obligations, could not even pay interest on its debts; speculators in lands despaired of a rise in values so long as the Government could not defend its borders and protect its frontier population. The desire of all these classes, from Boston to Charleston, was for a Government which would govern.

Under these circumstances the idea of a special convention to revise the Articles of Confederation grew in favor. Some of the States, notably Delaware, Massachusetts, and New Hampshire, had employed constituent conventions to draft new frames of government. The legislature of New York had in 1782 proposed a convention to revise the Articles of Confederation. At the suggestion of Governor Bowdoin, the General Court of Massachusetts had resolved in 1785 in favor of such a convention; but the delegates in Congress, for reasons best known to themselves, had refused to present the resolution. In any case Congress could hardly be expected to take the initiative.

For many years Virginia and Maryland had been at loggerheads over the navigation of the Potomac River and Chesapeake Bay. In 1784 commissioners from both States met at Alexandria, and subsequently at Washington's country-seat, at Mount Vernon, to make a last effort to adjudicate their differences. It speedily appeared that the question of commercial regulations was one that concerned

also their neighbors to the north. Maryland proposed that Pennsylvania and Delaware should be invited to a further conference. The assembly of Virginia went still further and appointed delegates to meet with delegates from other States "to take into consideration the trade of the United States" and "to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony." Annapolis was selected as the place of meeting.

The response of the States to this call was disappointing. Only five States sent delegates. Positive action on trade relations was, of course, out of the question. But Alexander Hamilton, who attended as a delegate from New York, drafted a report which went far to redeem the situation. Addressed to the legislatures of the States represented at Annapolis, it called attention to the critical state of the Union and the need of a convention of delegates with wider powers from all the States; and in conclusion, it named Philadelphia and the second Monday in May, 1787, as a suitable place and time for such a convention. "From motives of respect" a copy of this report dated September 14, 1786, was sent to Congress.

With its wonted indecision, Congress dallied with this bold proposal until late in the following February. Meantime, Virginia and other States appointed delegates to the convention which Congress had not yet sanctioned. When Congress finally issued the summons, it made no reference to the Annapolis Convention, though it took over bodily the recommendations of that body. The sole and express pur-

pose of the convention was declared to be the revision of the Articles of Confederation.

The delegates to the Philadelphia Convention were to be "appointed by the States." As a matter of course, the choice devolved upon the legislature in every instance. To what extent the active economic interests directed and controlled the selection is a mere matter of speculation. Certain it is that the members of the convention belonged to the governing class in their respective communities. Almost to a man they had held important public positions. To a surprising extent they came from the commercial sections of their States. "Not one member represented in his immediate personal economic interests the small farming or mechanic classes." A large majority were "directly and personally interested in the outcome of their labors through their ownership of property, real or personal." Many were holders of public securities and profited by the later funding operations of the new Government; some had invested in Western lands; others had capital invested in manufacturing, shipping, and slaves. Thus circumstanced, they had no mind to try doubtful experiments in government.

Among the first of the delegates to reach Philadelphia was James Madison. Other members of the Virginia delegation soon joined him, and on the 13th of May, Washington made what was really a triumphant entry into the city. When the 14th dawned only a few delegates had arrived. Inclement weather and bad roads detained many, no doubt; but a general dilatoriness in heeding the summons was ac-

countable for the tardiness of others. Until a majority of States were represented, the delegates could only adjourn from day to day. That the gentlemen from Virginia put this time to good use appears from the plan which they drew up as a tentative program and which Randolph presented to the convention. Indeed, there is little doubt that much unrecorded progress was made throughout the convention by informal conferences among the leaders.

It was not until Friday, May 25, that seven States were represented and a preliminary organization could be effected. Washington was the unanimous choice for president, though tradition has it that Franklin was the first choice of many delegates. Altogether, though not at any one time, there were fifty-five delegates in attendance from twelve States. Rhode Island was never represented. The average attendance was hardly more than thirty. It was possible, therefore, to adopt simple rules of procedure and to permit full discussion. The credentials of the delegates gave them, with a single exception, free hand in revising the Articles of Confederation. Delaware alone forbade its representatives to make any alterations which should deprive the State of its equal vote in Congress.

As the doors closed on this notable body in the chamber over Independence Hall in the State House, profound secrecy enveloped its proceedings. Not until the publication of the journal by act of Congress in 1819 were the actual proceedings of the convention divulged; and many more years passed before Madison's notes on the debates were given to the

curious public. The earth scattered on the pavement to silence the rattling of wheels and the sentries stationed at the doors to warn intruders gave added emphasis to the importance of this gathering.

The task before the convention was one of immense difficulty. The most general criticism of the Confederation was that expressed in the vague phrase, "lack of power"; but the defect could not be overcome merely by giving new powers to Congress. Any such increase of authority involved a delicate readjustment of the relations of the States to each other and to the central Government. Before the convention had been in session a fortnight, a line of cleavage among the delegates appeared. To the most obtuse mind the resolutions presented as the Virginia plan seemed to reach far beyond any mere revision of the Articles of Confederation. Randolph frankly admitted the scope of his resolutions by urging that a union of the States merely federal would not suffice. The convention so far yielded to the general drift as to adopt, in committee of the whole, the resolution "that a national government ought to be established consisting of a supreme Legislative, Executive, and Judiciary."

As the group of nationally minded delegates, led by Madison and Wilson, of Pennsylvania, seized this initial advantage and secured the acceptance, step by step, of the main features of a national government, the delegates from the smaller States drew together in alarmed opposition. It was in their behalf that Paterson, of New Jersey, presented his resolutions. In contrast to the Virginia plan, this held out only

the prospect of an improved Confederation. Additional powers were to be given to Congress and there was to be an executive and a supreme judiciary; but the basal principle of the Confederation — the equality of the States — was left untouched. Given the alternative between the New Jersey plan and the Virginia plan as amended, seven States voted for the latter. Only New York, New Jersey, and Delaware preferred the former. The vote of Maryland was divided. The convention then returned to the detailed consideration of the amended Virginia plan. The large-State men were now disposed to make some concessions. The word "national" was dropped from all the resolutions; and minor changes were made in the interest of harmony. But on the fundamental question of what was termed "proportional representation," — that is, representation of the States in proportion to numbers in the national legislature, — no agreement seemed possible. More than once the convention was on the point of adjourning *sine die*. Even the usually placid Franklin suggested that "prayers imploring the assistance of Heaven . . . be held in this Assembly every morning."

In spite of the opposition of the smaller States, the convention finally voted that the rule of suffrage in the first branch of the legislature ought not to be according to that established by the Articles of Confederation. Debate then turned on the manner of constituting the upper chamber. On July 2, a vote was taken on the proposal of the Connecticut delegation that each State should have an equal vote in the upper house. The result was a tie, five States

against five, with the vote of one State divided. The deadlock seemed complete.

Hoping that a compromise might even yet be effected, General Pinckney proposed a committee of one from each State to consider the whole matter. Opposition was made, but the convention indorsed the proposal and chose the members of the committee by ballot. The selection was obviously favorable to the small-State party, for the committee abandoned the idea of proportional representation in the second chamber. On July 5, it recommended that in the first branch of the legislature there should be one representative for every forty thousand inhabitants in each State, counting three fifths of the slaves, and that in the second chamber the States should have an equal vote. The first proposition underwent further changes at the hands of a special committee, but the principle of representation was accepted. On July 16, the first proposition as amended and the second proposition without change were adopted by a vote of five States to four, with the vote of one State divided. Very properly historians have termed this the great compromise of the Constitution, for without it the further work of the convention would have been impossible. In agreeing that three fifths of the slaves should be counted in apportioning representation, the convention made no innovation, but simply took over the federal ratio which Congress had recommended in 1783 as the basis for future apportionment of requisitions among the States. On this point there was no great difference of opinion in the convention.

It would be a mistake, however, to suppose that

with this obstacle to union removed, the Constitution speedily took form. On the contrary, every proposal bristled with controversial points. The Northern commercial States demanded insistently that Congress should be given power to regulate commerce. It was, indeed, the desire of the commercial classes in all the States that Congress should be given power to pass retaliatory acts against Great Britain, but the planters of the Carolinas and Georgia feared — not without reason — that the power to regulate commerce might be used to interfere with the importation of slaves. Here, too, the spirit of compromise prevailed. The power was granted, but the importation of such persons as the States thought proper to admit was not to be prohibited before the year 1808.

From first to last, divergent views were held as to the constitution of the chief executive office. After the initial question, whether the office should be single or plural, was decided, the manner of election remained to be considered. The early proposal to make the President elective by the national legislature was dropped as the office assumed greater importance in the general scheme. If the independence of the legislature was to be maintained, some form of indirect popular choice was favored. But if the people were to elect, the larger States would have a decided advantage. Here was the old question in another form. The electoral scheme finally adopted was essentially a compromise. In most instances — Mason, of Virginia, said nineteen out of twenty times — it was believed that the electors would so scatter their votes

that no candidate would have a majority; consequently the Senate would make a choice from among the five candidates having the highest votes. By this arrangement the large States would in effect nominate and the small States elect the President. But because the Senate had already been given extensive powers, the convention transferred the final election to the House, with the provision that the vote there should be by States. The eventual election of a Vice-President was left to the Senate, whenever the electoral college failed to make a choice.

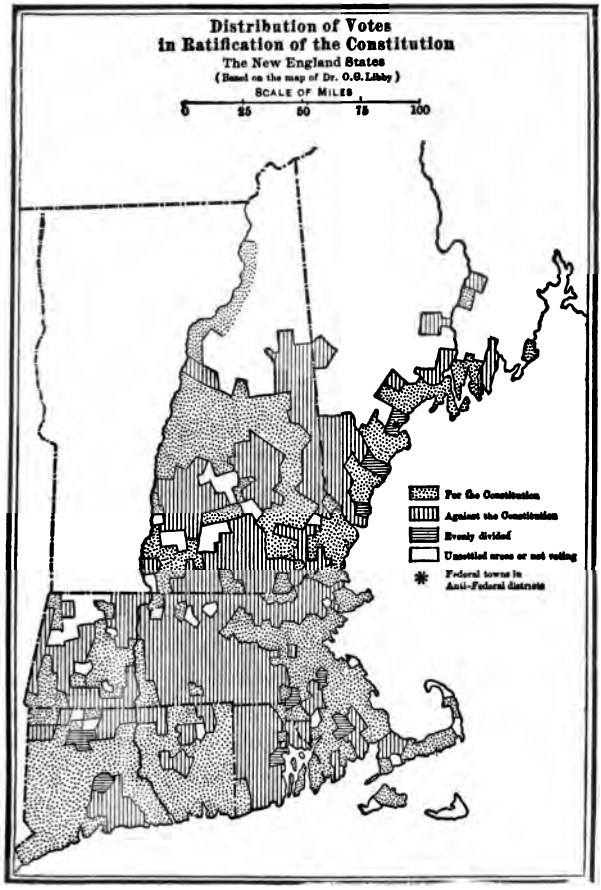
From time to time the convention resorted to committees to facilitate its work. Most important services were rendered by the committee of detail, which early in August put into orderly and connected form the conclusions which the convention had reached. It was the committee on unfinished business which suggested the method finally adopted of electing the President. In its final form and phrasing the Constitution is the work of Gouverneur Morris, who prepared the report of the committee of style.

Citizens of Philadelphia who took up their copies of the *Pennsylvania Advertiser* on Tuesday, September 17, found to their surprise that the columns were completely filled with the new Constitution. This was their first intimation of what the convention had really done. Rumor had stalked abroad that the convention was rent by dissensions; but the curious reader saw at the end of his paper the words, "Done in convention by the unanimous consent of the States . . . in witness whereof we have hereunto subscribed our names." Done by unanimous

consent of the delegates the Constitution was not, for not all the delegates who were present on the last day would affix their signatures. It was Gouverneur Morris who suggested the phrase which gave a specious unanimity to the work of the convention.

The thoughtful reader of the Constitution must have been impressed by the new features which caught his eye. In place of the old inefficient and powerless Congress, he observed a well-organized national legislature, an independent executive, and a federal judiciary of ample jurisdiction. Further scrutiny must have apprised him that the new Government would operate directly upon individuals, thus remedying a vital defect in the Confederation. The powers given to Congress may well have set at rest the minds of anxious public creditors. With the power to lay and collect taxes, to raise and support a military and naval establishment, and to regulate commerce, Congress had ample means to pay the public debt, to enforce its claims, and to offer protection to trade and industry. Not less significant to property-owners were the brief clauses in the new Constitution which sharply forbade States to emit bills of credit, to make anything but gold and silver legal tender in payment of debts, and to make laws impairing the obligation of contracts.

But what guaranty was there that States would observe these prohibitions? The power to coerce a State was nowhere conferred. The militia, to be sure, could be called out to execute the laws; and the United States guaranteed to every State a republican form of government and promised protection



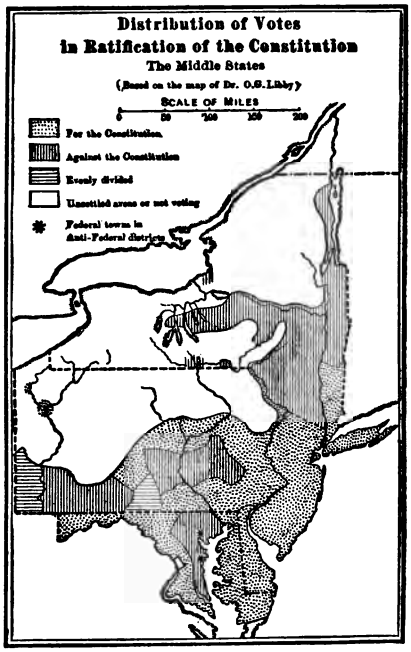
against domestic violence. Congress could deal surely and effectively with any future Shays if it were invited to do so. But what if a State passed a law violating the obligation of contracts? The answer is

contained in the clause which reads: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This and the correlative clause which extended the judicial power to all cases arising under the Constitution, the laws and the treaties of the United States, may be called the keystone of the whole constitutional structure. "For the first time in history, courts are called upon by the simple processes of administering justice, in cases where private right or personal injury is involved, to uphold the structure of the body politic." And there were those in the convention who believed that the principle of judicial control included the power of passing upon the constitutionality of laws enacted by Congress.

It was still within the power of the old Congress to expedite or block the ratification of the new Constitution. The document which the Philadelphia Convention presented was technically only a revision of the Articles of Confederation, which might be altered only with the consent of the legislatures of all thirteen States; but the last article of this new instrument provided that when ratified by conventions (not legislatures) in nine States, it should go into effect among the States so acting. In effect, Congress was asked to sanction a secession of nine States from the old Union which had been declared perpet-

ual. Making a virtue of necessity, Congress finally yielded and passed the Constitution on to the States.

Since the party struggles of Whigs and Tories no campaign of continental proportions had ever been seen like that which ensued between the friends and foes of the new Constitution. By their forehandedness and their clear perception of what they must do, the Federalists, as the proponents of better government styled themselves, had a slight tactical advantage. The Anti-Federalists resented the assumption of the name by their opponents. They were the true friends of federal government, while the friends of the new Constitution aimed to set up a consolidated government. The press teemed with letters and essays, allegories and satires, squibs and pasquinades, expostulating, warning, ridiculing. The public was invited to heed



the admonitions of Cato, Cassius, and many another worthy Roman.

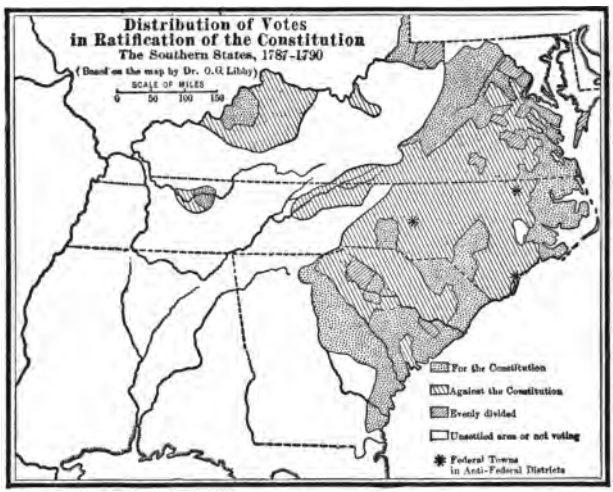
Although much the same arguments, sober or satirical, were used everywhere, the campaign had to be fought out in the several States, each with its own peculiar social, economic, and political conditions. In Massachusetts the eastern counties, with their dominant commercial and mercantile interests, favored the Constitution, while the interior agricultural section, which had fought the battles of the Revolution and recruited the ranks of Shays' army, opposed it. The interior counties of New York containing the farming population were Anti-Federal, while the city and county of New York with its environs — the commercial section — were Federalist. In Pennsylvania, those who had opposed the domination of the Scotch-Irish and German radicals in the State Government now united in advocacy of the new Constitution. Here as elsewhere the Federal area corresponded closely to the counties where commercial and mercantile interests were most in evidence. In Virginia, the old-time social and economic antagonism between east and west, between the planters and merchants of the tidewater and the small farmers of the interior, reappeared. Much the same alignment is found in the Carolinas. Beyond the Alleghanies, the people of the Kentucky and Tennessee districts were strongly opposed to the Constitution.

Detailed studies of the geographical distribution of votes in the state conventions, and recent investigations in the archives of the Treasury Department, sustain the conclusion to which the historian is

driven by the testimony of contemporaries, that the fundamental opposition between the advocates and opponents of the Constitution was based on distinctions of wealth. On his first view of the Constitution young John Quincy Adams wrote in his diary: "It is calculated to increase the influence, and power, and wealth of those who have any already." A writer in the *Boston Gazette* declared that the supporters of the Constitution consisted generally of the noble Order of Cincinnatus, holders of public securities, bankers, and lawyers: "these with their train of dependents form the Aristocratick combination." Over against this should be put the remark of Alexander Hamilton: that the new Constitution encountered the "opposition of all men much in debt, who will not wish to see a government established, one object of which is to restrain the means of cheating creditors." According to John Adams, the Constitution was "the work of the commercial people in the sea-port towns, of the planters of the slave-holding states, of the officers of the Revolutionary army, and the property-holders everywhere."

From November to the following July the campaign continued. Delaware, New Jersey, and Georgia ratified the Constitution unanimously; Connecticut by a majority of three to one; and Pennsylvania, by a majority of two to one. But there is reason to believe that these majorities in the ratifying conventions did not reflect public opinion accurately. Massachusetts, Maryland, and South Carolina followed hesitatingly, each proposing amendments to the Constitution. Toward the end of June the ninth State,

New Hampshire, threw in her lot with the majority; and on the heels of this news came the intelligence that the Old Dominion had also ratified. The Constitution was now the law of the land. In the stanch Federal city of Philadelphia, the Fourth of July was celebrated with great rejoicing, for in the parlance



of the time the sloop Anarchy was ashore on Union Rock, the old scow Confederation had put to sea, and the good ship Federal Constitution had come into port bringing a cargo of Public Credit and Prosperity.

But until New York ratified the Constitution this rejoicing was premature. Geographically New York was a pivotal State. A union without this member was not worthy of the name. The task of the Fed-

eralists was here most difficult. Fully two thirds of the convention were at first opposed to the Constitution. The leadership of the Federalists fell to Hamilton. Together with James Madison and John Jay, he contributed to the newspapers a series of essays in advocacy of the Constitution, which, under the title *The Federalist*, have become a classic in our political literature. Just how the Federalists succeeded in overcoming a hostile majority and in securing a ratification of the Constitution by a vote of thirty to twenty-seven, remains a mystery to this day.

Half a century later it became the habit of statesmen of the nationalist school to speak of the Constitution as the work of the people of the United States. John Marshall declared the Constitution to be "an expression of the clear and deliberate will of the whole people." As a matter of fact, no direct popular vote was taken at any stage in its evolution. The delegates to the Philadelphia Convention were chosen by the state legislatures; their work was ratified by conventions of delegates in the several States; and these delegates were chosen in every State but one on a carefully limited suffrage. New York alone provided that delegates to the convention should be elected on the basis of manhood suffrage. Elsewhere property qualifications were imposed which disfranchised probably about one third of the adult male population. In all the States a considerable proportion of the voters abstained from voting. In Boston, where twenty-seven hundred were qualified to vote, only seven hundred and sixty took the trouble to

vote for delegates to the state convention. A recent writer hazards the guess that "not more than one fourth or one fifth of the adult white males took part in the election of delegates to the state conventions." If this be true, the Constitution expressed something less than the will of the whole people and perhaps not even of a majority. The making of the Constitution was clearly the work of a party rather than of the whole people. In the ranks of the Federalist party were the wealth and intelligence which made possible concerted and rapid action. The leadership fell naturally to those who had been accustomed to public life. From this point of view, the adoption of the Constitution was the triumph of a "natural aristocracy."

Meantime, Congress nearing its end made testamentary provision for its heir. After much wrangling and vacillation, it fixed upon New York as the seat of the new Government and summoned the States to choose presidential electors, Senators, and Representatives. The new national legislature was to assemble on the first Wednesday in March, which fell upon the 4th. To this summons, two States turned a deaf ear. Not having ratified the new Constitution, North Carolina and Rhode Island were strangely circumstanced. Of all the States which had entered into the "firm league of friendship," they alone remained loyal — loyal, but discredited.

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CHAPTER III

THE RESTORATION OF PUBLIC CREDIT

"THE people have been ripened by misfortune for the reception of a good government," Washington wrote to Jefferson, in the midsummer of 1788. "They are emerging from the gulf of dissipation and debt into which they had precipitated themselves at the close of the war. Economy and industry are evidently gaining ground." There is, indeed, abundant evidence that thrift and enterprise were steadily banishing hard times. The task of establishing the new government was made incomparably easier by the confidence inspired by returning prosperity.

Already West India commerce had resumed very nearly its old volume. Both France and Spain had made concessions to vessels which came to the island ports laden with American produce. The Dutch and the Danish islands had always been kept open to American trade; and evidence is not wanting that the needs of British West India planters were stronger than their respect for orders in council. At all events, by hook or crook, American farm products and lumber found their way to British planters as well as to their French competitors. But something more than the resumption of the West India traffic was needed to restore prosperity. Ne-

cessity drove American sea captains to longer voyages and larger ventures. American vessels found their way in increasing numbers through the Baltic to Russia, and around Cape Horn to the Pacific ports, to China, and to the East Indies. One of the pioneers of this traffic to the Far East was Captain Robert Gray, of Boston, who, in his ship, the Columbia, doubled the Cape of Good Hope and completed the first American voyage around the world.

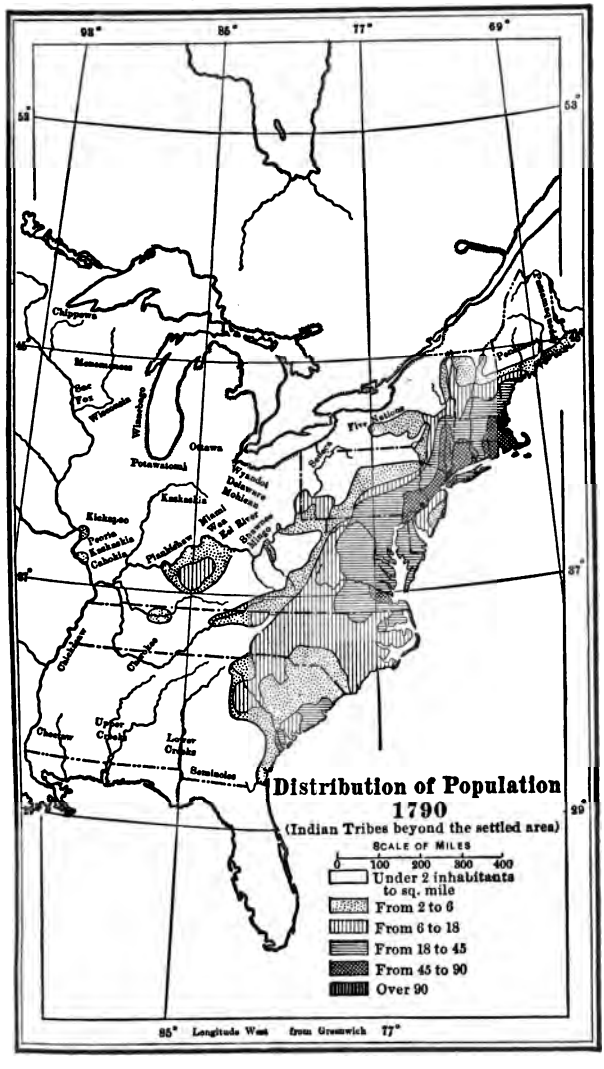
While hardy seamen were seeking new markets, American ingenuity was trying to reproduce the machinery which was coming into use in England for the manufacture of textiles. In the year 1789, Pennsylvania was manufacturing cotton cloths, hats, and "all articles in leather," while Massachusetts was making cordage, duck, and glass. "The number of shoes made in one town, and nails in another, is incredible," wrote Washington. When Hamilton made his famous report on manufactures two years later, he described some seventeen industries which had already attained considerable proficiency, though nearly all of these were carried on in the household.

The dawn of the 4th of March was saluted by the guns at the Battery in New York and by the ringing of church bells. This day was to witness the inauguration of the new Government. Delusive expectation! The dilatory habits of a decade were not so readily unlearned. To the amusement of ill-wishers, barely a score of Congressmen appeared in the city; and the carpenters were still at work remodeling the old City Hall into a fitting habitation for the new Federal Congress. It was not until

the 30th that enough Representatives were in attendance to make up a quorum and to permit the House to organize. Another week passed before the Senate could organize.

On the 6th of April, the Senate summoned the House to attend the counting of the electoral votes. It then appeared that George Washington had received the highest number (69) and John Adams the next highest (34). This happy result had not been achieved without some concerted action among the Federalist leaders. The great personal influence of Washington was needed, indeed, to give dignity to the new office. While messengers were hastening to inform Washington and Adams of their election, the members of Congress had ample opportunities to look each other over. If they were not well known to each other, they were at least conspicuous in their respective communities. Nearly every man had held public office under his State Government and a large proportion had sat in the state conventions which had ratified the Constitution. Over two thirds of the Representatives counted themselves Federalist, or at least friends of the new Constitution.

On the 30th of April, the Senate and House in joint session received the President-elect. With simple ceremonies as befitted the occasion, the inauguration of our first President was consummated. Stepping from the Senate chamber upon the balcony, Washington looked out upon the crowds which thronged Wall Street. The Chancellor of New York administered the oath, the populace shouted, "Long



93°
85°
77°
69°
53°
37°
29°
Chippewa
Menomonee
Sac Fox
Winnebago
Ottawa
Potawatomi
Kaskaskia
Kickapoo
Peoria
Kaskaskia
Cahokia
Piankishaw
Wyandot
Delaware
Mohican
Miami
Wea
Eel River
Snowness
Mingo
Five Nations
Chickasaw
Cherokee
Choctaw
Upper Creeks
Lower Creeks
Seminoles
Distribution of Population
1790
(Indian Tribes beyond the settled area)
SCALE OF MILES
0 100 200 300 400
Under 2 inhabitants to sq. mile
From 2 to 6
From 6 to 18
From 18 to 45
From 45 to 90
Over 90
85° Longitude West from Greenwich 77°

live George Washington, President of the United States!" and then the President withdrew to deliver his inaugural address.

When the minutes of the Senate were read next day an incident occurred, which, trivial as it seems, was indicative of a spirit that may be truly characterized as American. The President's address was referred to as "His most gracious Speech." In a moment the doughty Maclay, of Pennsylvania, sprang to his feet with a vigorous protest. These were words which savored of kingly authority and which were odious to the people. He moved that they be struck out. Vice-President John Adams remonstrated mildly; he saw no objection to borrowing the practices of a government under which we had lived so long and happily. Senator Maclay was on his feet at once with the declaration that the sentiments of the people had undergone a change adverse to royal government. Such a phrase on the minutes of the Senate would immediately be represented as "the first rung of the ladder in the ascent to royalty." Maclay had his way and the offensive phrase was erased. Much the same republican spirit appeared in the debate on titles. The Senate would have preferred to address the President as "His Highness, the President of the United States and Protector of their Liberties"; but the House insisted on having the plain title, "President of the United States."

Even before the inauguration, the House of Representatives had entered upon its first tariff debate, for an immediate revenue was needed if the wheels of government were to move. Madison was ready with a

scheme of customs duties patterned very largely after the ill-fated project of 1783. On all sides it was agreed that taxes should be external rather than internal, upon foreign rather than domestic commerce. Madison advocated duties upon "articles of requisition likely to occasion the least difficulty," such as spirituous liquors, molasses, wines, tea, coffee, cocoa, pepper, and sugar. But almost at once the idea was broached that indirect aid should be given to certain industries. The clash of opposing sectional interests appears even in this first debate. In the end Madison's simple revenue measure was set aside. Specific duties were levied on more than thirty articles, and *ad valorem* duties ranging from five to fifteen per cent on all others. Revenue was still the main object, but protective duties were deliberately grafted upon the bill. Tonnage dues were fixed in a separate act, while still another act laid the foundations of our national fiscal administration. In every State, side by side with local officials, yet independent of state control, there were to be collectors, surveyors of ports, inspectors, weighers, gaugers, measurers, — in short, so many living witnesses to the existence of a self-sufficient central government.

When Congress addressed itself to the work of establishing the executive departments, questions of constitutional interpretation thrust themselves into the foreground. Experience under the Confederation proved the need of at least the three departments of foreign affairs, war, and treasury. Bills to establish these departments were at once framed and favorably considered, but exception was taken to the pro-

visions making the heads of these departments, who were appointed by the President and Senate, removable by the President alone. It was finally agreed to assume that the President had the power to remove from office. The act was therefore made to read, "Whenever said principal officer shall be removed by the President." In this wise, by legislative construction, the Constitution was expanded at many points in the early years of the new Government.

The bill to establish the Treasury Department was drawn in accordance with the ideas of Hamilton, for it was expected that he would be the first incumbent of the office. It may have been his well-known partiality for British institutions that caused the House to mistrust the phrase which made it the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and the support of the public credit." "If we authorize him to prepare and report plans," argued Tucker, of Virginia, voicing that fear of executive authority which was then instinctive, "it will create an interference of the executive with the legislative powers; it will abridge the particular privilege of this House. . . . How can business originate in this House, if we have it reported to us by the Minister of Finance?" The House was not minded to make Alexander Hamilton a Chancellor of the Exchequer. The bill was amended to read, "digest and prepare." Subsequently the House showed unmistakably its determination to assume direction of the national revenues and expenditures.

One of the first concerns of Congress was to give

substance to the colorless statement of the Constitution that there should be one supreme court and such inferior courts as Congress should ordain and establish. On the day following its organization, while the House was grappling with the question of revenue, the Senate appointed a committee to bring in a bill to establish the federal courts. The chairman of this committee was Oliver Ellsworth, of Connecticut, who had sat on the bench of the Court of Appeals under the Confederation and who had been an influential member of the Federal Convention. The bill reported by the committee was substantially his work. It provided for a supreme court bench of six judges — a chief justice and five associates; for thirteen district courts, each with a single judge; and for three circuit courts, each of which was to consist of two justices of the Supreme Court and a district judge. Lengthy provisions in the act carefully delimited the jurisdiction of these courts, and laid down the modes of procedure and practice in them. Of great importance was the twenty-fifth section, which provided for taking cases on appeal to the Supreme Court from the lower federal and state courts. The words of the act, by a fair implication, would seem to confer upon the Supreme Court the power to review the decision of a state court holding an act of the United States unconstitutional. It would seem to follow logically that the Supreme Court might do also directly what it might do indirectly — declare an act of Congress void by reason of its repugnance to the Constitution. Ellsworth, at least, held that in the discharge

of their ordinary duties, the judges of the federal courts would have the right to pronounce acts of Congress void when they stood in conflict with the Constitution. Attempts were made, in the course of the debate on the Judiciary Act, to strip the federal courts of all jurisdiction except in admiralty and maritime cases. Many members of Congress agreed with Maclay in thinking that the Judiciary Act was calculated to draw all law business into the federal courts. "The Constitution is meant to swallow all the state constitutions, by degrees," averred the worthy Senator from Pennsylvania; "and this [bill] to swallow, by degrees, all the state judiciaries."

The wisdom of the new President appeared in his appointments to office. Concerned solely with the fate of the federal experiment, he sought consistently the support of those who would add weight to the new Government, and who were Federalists in politics. Not only personal fitness but sectional interests had to be taken into consideration. Washington was solicitous to draw "the first characters of the union" into the judiciary, particularly those who had served in the state courts and commanded public confidence. His choice for Chief Justice fell upon John Jay. Rutledge, of South Carolina, Wilson, of Pennsylvania, Cushing, of Massachusetts, Harrison, of Maryland, and Blair, of Virginia, were first named as Associate Justices. Washington chose his chief advisers also from different sections. Thomas Jefferson was invited to become Secretary of State — a post which he accepted somewhat reluctantly. Hamilton did not have to be urged to take the headship of the

Treasury. Knox was given the superintendence of a military establishment which then numbered only a few hundred men. Edmund Randolph was appointed Attorney-General.

Before Congress adjourned in the fall, it adopted and sent to the States for ratification twelve amendments to the new Constitution. There were those who thought this action precipitate. Why tinker with a constitution which had hardly been tried? To all such Madison replied cogently that the amendments which his committee reported did not alter the framework of the instrument, but added only certain safeguards to individual rights. The lack of a declaration of rights had been deplored in every convention and had cost the support of many respectable people. Moreover, two communities had not yet "thrown themselves into the bosom of the Confederacy." The wisdom of this course was attested by the prompt ratification of ten of the twelve proposed amendments.

On November 21, 1789, North Carolina ratified the Constitution, leaving Rhode Island to a position of hazardous isolation. Congress was considering a bill to cut off the commercial privileges of the State, by putting her on the footing of a foreign nation, when news came that a convention at Newport had ratified the Constitution by the narrow margin of two votes. In the following year the number of States was increased by the admission of Vermont. The admission of Kentucky followed in 1792; and Congress paved the way for the entrance of other States into the Union by organizing the Southwest

Territory out of Western lands ceded by the three southernmost States. The expansion of the United States had begun, bringing with it unforeseen problems.

The severest labors of Congress began in the second session, when the new Secretary of the Treasury presented his first report on public credit. Shortly after the Convention of 1787, Hamilton had expressed his belief that one of the great dangers which threatened American society was "the depredations which the democratic spirit is apt to make on property." Distrusting the political capacity of the people, whom in private he called "a great beast," he believed that the new Government would succeed or fail in just the proportion that it enlisted the support of the influential and wealthy classes. He set himself deliberately to the task of identifying the interests of the propertied classes with those of the Government.

It was a sorry state in which Hamilton found the national finances. The foreign debt, including principal and arrears of interest, amounted to $11,710,000. The domestic debt, much more difficult to determine, was not less than $42,414,000, about one third of which was made up of arrears of interest. The debts of the individual States, principal and interest, were estimated at about $25,000,000. These were heavy burdens for the shoulders of a young Government whose fiscal powers were as yet untested. But the shoulders had to be fitted to the burden, if public credit was to be restored.

In this first report on public credit, January 9,

1790, Hamilton analyzed the financial situation with masterly clearness and set forth his plans for the adjustment of the national debt. The determination of Congress to make adequate provision for the support of the public credit was justified in his mind by every consideration. A country like the United States, possessed of little active wealth, must borrow in emergencies; to borrow on good terms, it must establish its credit; and to maintain its credit, it must faithfully observe its contracts. But over and above these considerations, dictated by expediency, were "immutable principles of moral obligation." Moreover, the national debt was no ordinary obligation: it was "the price of liberty." On all sides, it was agreed that the debt contracted abroad should be provided for in the precise terms of the contracts.

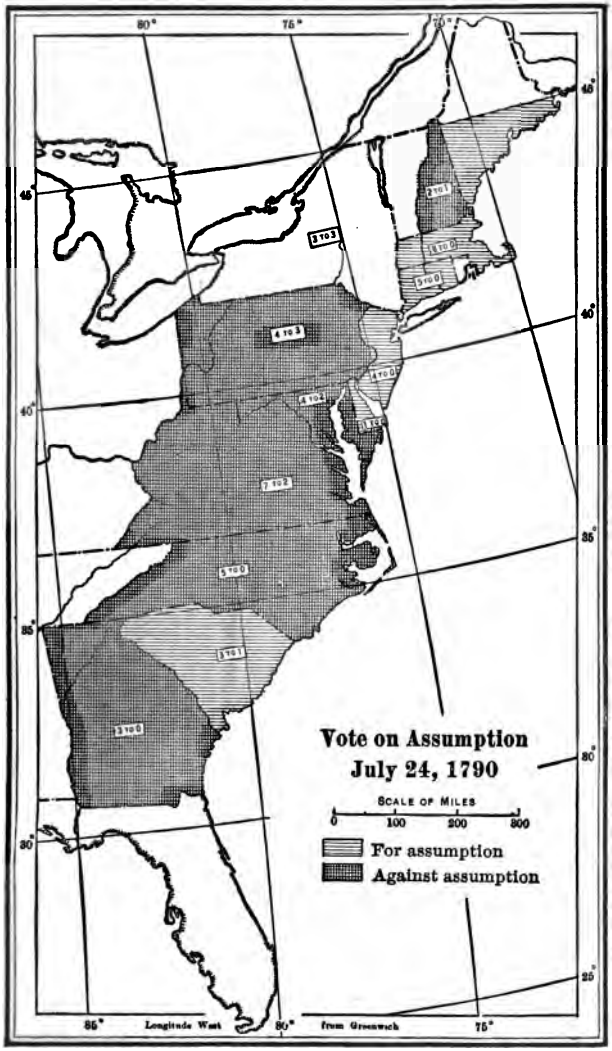
It was only in regard to the domestic debt that differences of opinion were likely to arise. The notes representing this debt were of all sorts and kinds. Much of it had changed hands and all of it had depreciated in value. Some of it still circulated as a monetary medium. The vital question was: how were the present holders to be paid? At the face value of the paper, or at the price for which it had been purchased? Hamilton argued firmly against any discrimination, both because it was a breach of contract and because it was a violation of the rights of a fair buyer.

When this part of Hamilton's plan came before Congress in concrete form, it gave rise to the bitterest debate which had been heard. That it would give opportunity for immoderate speculation was plain

enough; yet every alternative which aimed to do justice by both the original and the present holder was confessedly inadequate, when a certificate of indebtedness, for example, had passed through several hands without record.

No sooner was Hamilton's proposal made than a wild scramble began for the possession of the hitherto worthless government paper. "Couriers and relay horses by land, and swift sailing pilot boats by sea, were flying in all directions," wrote Jefferson. "Active partners and agents were associated and employed in every state, town, and country neighborhood, and this paper was bought up at 5/ and even as low as 2/ in the pound, before the holder knew Congress had already provided for its redemption at par. Immense fortunes were thus filched from the poor and ignorant, and fortunes accumulated by those who had themselves been poor enough before."

The second part of the scheme outlined in Hamilton's first report aroused even more bitter opposition. With a fine audacity he proposed the assumption of state debts. It is difficult to believe that Hamilton was perfectly ingenuous in stating his reasons for this move. He apprehended, he said, that the States would be hampered in satisfying their creditors because they had surrendered one important source of revenue to the central Government, duties on imports. In resorting to other means, the States might pass conflicting measures which would oppose industry. Besides, the debts had been incurred in the cause of Union and should be borne by all. But deeper than these reasons was probably a political


80°
75°
70°
45°
40°
35°
30°
25°
3 to 3
2 to 1
1 to 0
3 to 0
4 to 3
4 to 0
4 to 2
1 to 0
7 to 2
5 to 0
3 to 1
3 to 0
Vote on Assumption
July 24, 1790
Scale of Miles
0
100
200
300
For assumption
Against assumption
85°
Longitude West
80°
from Greenwich
75°

motive. Hamilton had no local attachments. A thoroughgoing nationalist, he saw in the claims of the States to autonomy only so many obstacles in the path of national unity. "To cement more closely the Union of States" by creating a solidarity of financial interests, was, indeed, the basal principle of his fiscal plans.

The wrath of Congressmen from States like Virginia, which had already discharged most of their debts, knew no bounds. After they had practiced thrift and met their obligations, should they, forsooth, now aid their less provident sisters? The chief opponents of assumption came from the South, and the chief advocates from the North. South Carolina and New Hampshire parted company with their neighbors, the one because it had a large debt and the other because it had not. Pennsylvania was divided on this question. For a time the opposition was too strong to be overcome. On May 25, 1790, an adverse vote seemed to seal the fate of "Miss Assumption," as the wits of the day called this measure. Just at this juncture the question of the location of the future capital, which had been debated inconclusively during the first session, was revived. Here again the North was arrayed against the South. Should the capital be located on the Potomac, as Maryland and the Southern States wished, or somewhere in Pennsylvania? New York was now out of the question, and since Pennsylvania would not support assumption, the New England States rather spitefully opposed the claims of Philadelphia.

Here was a situation which called for the *finesse*

of the politician. Might not votes for one project be traded for the other? Would the Virginia representatives abandon their opposition to assumption for the sake of locating the capital on the banks of the Potomac? It was at this juncture that Hamilton sought out Jefferson, whose influence over the Congressmen from Virginia was very considerable, and laid the project before him. With a readiness which he afterward regretted, Jefferson fell in with the scheme, and invited Hamilton and certain Virginia Representatives to dine at his table. In this comfortable fashion, over their wine, these gentlemen reached an amicable agreement. Such is Jefferson's account, but the matter could not have been quite so simple, for other Representatives than those from Virginia changed their votes and so contributed to the final settlement of the controversy. Nor is Jefferson quite ingenuous when he afterward described himself as duped by Hamilton, for he had not shown himself averse to assumption at any time. Be this as it may, Congress voted to assume the debts of the States, and to remove the seat of government from Philadelphia after ten years to a district ten miles square on the Potomac, which Washington was to select.

The need of further revenue was now imperative. As Hamilton said in his second report on the public credit, the duties on imported articles had reached a point which might not be exceeded "without contravening the sense of the body of the merchants." When Congress met for its third session in December, 1790, Hamilton boldly urged what was perhaps as unpopular a tax as he could have proposed — a

duty on distilled spirits. To most Americans an excise was not only an internal tax, but as Jefferson said, "an infernal one." It was bound to fall with heavy weight upon the people of the interior who turned much of their corn and rye into whiskey, for more convenient transportation over the mountains to Eastern markets. But despite strenuous opposition the excise was voted. It was, as a member of Congress expressed it, like "drinking down the national debt."

In this same report of December 13, 1790, Hamilton advocated the establishment of a national bank. Such an institution, he believed, would increase the amount of active capital in the country and at the same time serve the Government as a fiscal agent in obtaining loans and in collecting taxes. Opposition to this project gathered rapidly and was encouraged by the Secretary of State. The debates in Congress touched upon the monopolistic tendency of such a banking institution and its constitutionality, rather than upon its intrinsic merits and demerits. The bill was carried by substantial majorities in February, 1791, and sent to the President for his approval.

Washington was so beset with doubts as to the constitutionality of the bank bill that he asked his secretaries and the Attorney-General to express their opinions. Jefferson argued that the power to incorporate a bank was not given by the Constitution to Congress, for it was not among the enumerated powers and it was not a power which belonged to any of the enumerated powers as indispensably

necessary to their exercise. Hamilton deprecated this attempt to confine the general Government either to powers expressly granted or to powers absolutely necessary to carry out the enumerated powers. There was another class, he contended, which might be termed "resulting" powers. If the end to be gained by a measure was comprehended within the specified powers, and the measure was obviously a means to that end and not forbidden by the Constitution, then it was clearly within the compass of the national authority. Washington finally yielded to Hamilton's persuasions, and signed the bill.

The charter of the bank fixed the capital stock at ten million dollars, of which the Government was to subscribe one fifth; the rest was open to public subscription. Three fourths of the public subscriptions might be paid in bonds of the Government. The notes issued by the bank were made receivable for all payments to the United States. The bank was to be the repository of the government funds. Its management was committed to a board of twenty-five directors chosen annually, who could establish branch banks as they deemed advisable. The charter was to run for twenty years.

The stock of the bank was not only subscribed at once, but soon sold at a premium which invited the wildest sort of speculation in Philadelphia, New York, and Boston. Stock-jobbing became a mania. "The coffee house is in an eternal buzz with the gamblers," Madison wrote from the seat of government. Sinister aspects of this speculative craze soon began to appear. "Of all the shameful circum-

stances of this business," said Madison, "it is among the greatest to see the members of the Legislature who were most active in pushing this job openly grasping its emoluments." It was reported that Schuyler, Hamilton's father-in-law, was to head the board of directors.

As the wide reach of Hamilton's financial policy became clear, men like Madison, whose sympathies had hitherto been enlisted on the side of more efficient government, had grave misgivings. When the Secretary of the Treasury intimated in his report on manufactures that Congress might promote the general welfare by appropriating money in any way it chose, Madison definitely parted company with his former collaborator, holding that by such an interpretation of the Constitution "the Government is no longer a limited one possessing enumerated powers, but an indefinite one, subject to particular restrictions." Jefferson had already expressed himself in a similar way apropos of the bank bill. The suspicions which the Secretary of State entertained of his brilliant colleague were deep-seated. Hamilton's well-known preference for the British Constitution and his disposition to convert his secretaryship into a sort of chief ministerial office confirmed Jefferson's distrust. Had he and Madison been alone in their suspicions, their misgivings would not be worth recording; but they voiced the sentiments of an increasing number of men who disliked the consolidating tendencies of the new Government.

Moreover, the aristocratic tone of Washington and his *entourage* gave deep offense. Both by disposition

and by calculation the President cultivated a certain official etiquette. His receptions were formal to the point of frigidity. He received his visitors "with a dignified bow, while his hands were so disposed as to indicate that the salutation was not to be accompanied with shaking hands." His figure clad in black velvet was most impressive. His hair was powdered and gathered in a large silk bag. His hands were dressed in yellow gloves, and he carried a cocked hat adorned with a black feather, while at his side hung a sword in a scabbard of white polished leather. To ardent republicans these trappings were so many manifestations of monarchical leanings. Hamilton's suggestion that coins should bear the head of the President under whom they were minted, was additional evidence to suspicious minds that the group of men who had the President's ear were monarchists at heart.

Before the First Congress adjourned, the nucleus of a new party was at hand and its fundamental tenet roughly foreshadowed: namely, opposition to the increase of the powers of the Federal Government through the use of implied powers and at the expense of the State Governments. The appearance of the first number of the *National Gazette* under the editorship of Philip Freneau was a sign that the further conduct of the Administration would be subjected to searching criticism. Freneau succeeded admirably in voicing the opinions of the nascent party. The columns of the *National Gazette* had much to say about "aristocratic juntos," "ministerial systems," and "the control of the government by a

wealthy body of capitalists and public creditors," whose interests were in opposition to those of the people. When Hamilton's paper, the *United States Gazette*, attempted to stigmatize the opposition as essentially Anti-Federalist, Freneau replied that only those men were true friends of the Union who adhered to a limited and republican form of government and who were ready to resist the efforts which had been made "to substitute, in the room of our equal republic, a baneful monarchy." By posing as the only stanch supporters of republicanism, the opposition secured a great tactical advantage. To call one's self emphatically a Republican was to cast aspersions upon the republicanism of one's opponents.

As yet, however, there existed only tendencies toward parties and not clearly defined political groups. The voting in the early sessions of Congress was far from consistent. The members gave little indication that they regarded themselves as adherents of parties whose fortunes depended on preserving an unbroken alignment for or against the Government. How little coherence the opposition possessed was apparent when Giles, of Virginia, presented a resolution censuring Hamilton for his management of the Treasury. Despite the unpopularity of Hamilton and the general distrust of his policy in Republican circles, the opposition could muster only seven votes in favor of the resolution, in the closing hours of the Second Congress.

The presidential election of 1792, therefore, was not properly a contest between parties. When Washington consented reluctantly to serve a second term,

his unopposed reëlection was assured. The Republicans expressed their opposition only by supporting for Vice-President, George Clinton, of New York, whose Anti-Federalism was well known, instead of John Adams, of Massachusetts. The congressional elections of this year resulted in the choice of men whose leanings were rather Republican than Federalist.

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CHAPTER IV

THE TESTING OF THE NEW GOVERNMENT

THE new Government fell heir to all the unsettled diplomatic problems of the Confederation. The political destiny of the thirteen States seemed fixed when they ratified the Constitution; the fate of the Western communities beyond the Alleghanies still hung in the balance. In Kentucky, General Wilkinson still intrigued in behalf of Spain. Sevier and Robertson, in Tennessee, were not averse to separation from the Eastern States nor to a Spanish protectorate. From New Orleans, Mobile, St. Marks, and Pensacola, the Spanish authorities supplied the Indians of the Southwest with arms and ammunition, counting on these uncertain allies to maintain their long frontier, for Spain still claimed Florida with its most northern boundary and refused to accept the validity of the British cession of 1783. More than this: Spain was disposed to claim both sides of the Mississippi, at least as far north as the Ohio.

In the Northwest, British garrisons still held Michilimackinac, Detroit, Niagara, Oswego, and other posts. The policy of Great Britain was dictated by much the same considerations as was that of Spain. Lord Dorchester, Governor of Canada, assured the home Government that "the flimsy texture of republican government" could not long hold the Western settlements in the Union. In 1789, the Lords of

Trade reported that it was a matter of interest for Great Britain "to prevent Vermont and Kentucke, and all other settlements now forming in the Interior parts of the great Continent of North America, from becoming dependent upon the Government of the United States, or of any other Foreign Country, and to preserve them on the contrary in a State of Independence and to induce them to form Treaties of Commerce and Friendship with Great Britain."

President Washington had hardly taken the oath of office when a war cloud appeared on the western horizon. Certain British vessels, bound for Nootka Sound to establish a trading-post, were seized by Spanish authorities in a way which provoked bitter resentment. In the early months of 1790, war seemed imminent. The situation was full of peril for the United States, for war would inevitably bring about military operations directed against Florida and Louisiana, and neither party was likely to respect the neutrality of the United States. The prospect of a conquest of the Spanish colonies by Great Britain alarmed the Administration. "Embraced from the St. Croix to the St. Mary's on the one side by their possessions, on the other side by their fleet," wrote Jefferson, "we need not hesitate to say that they would soon find means to unite to them all the territory covered by the ramifications of the Mississippi." Representations were therefore made to the British Government that "a due balance on our borders is not less desirable to us than a balance of power in Europe has always appeared to them."

Fortunately the war cloud vanished as rapidly as

it had formed. In the fall of 1790, Spain and England entered into a convention which averted hostilities. Yet the situation on both flanks of our long frontier was full of peril. Spain intrigued with the Creeks of the Southwest, while the British authorities in Canada encouraged the Indians north of the Ohio in their hostility to the white settlers. The attitude of the Indians along the Maumee and Wabash Rivers was so menacing that Governor St. Clair sent a punitive expedition against them; but the effect upon the Indians was so slight that a second expedition was set on foot in the following year. With a force of fourteen hundred raw recruits, unused to Indian warfare, St. Clair marched into the heart of the Indian country and suffered an inglorious defeat, on November 4, 1791. More than half of his command were killed, and scarcely a man escaped unscathed. It was a most humiliating reverse for the new Government, occurring almost under the eyes of British garrisons, and just as opposition was coming to a head in Congress.

While two European powers were thus poised like vultures awaiting the demise of the new republic, a third darkened the sky. France deemed the moment auspicious for an attack upon the colonial possessions of her late ally, the King of Spain. The South American revolutionist, Miranda, had persuaded the French Ministry, as he had before persuaded Pitt, that the Spanish colonial empire was tottering and would readily fall with its rich spoil at the first resolute attack. The French Ministers were dazzled by the prospect of reviving a colonial empire in the new

world. It seemed well within the range of possibilities to reduce Louisiana, and from the mouth of the Mississippi to begin the conquest of Spanish Central and Southern America. With this purpose in view,

the Government sent as Minister to the United States, Citizen Genet, an ardent apostle of the Revolution. He was instructed to secure a treaty with the United States — "a true family compact" — which "would conduce rapidly to freeing Spanish America, to opening the navigation of the Missis-

sippi to the inhabitants of Kentucky, to delivering our ancient brothers of Louisiana from the tyrannical yoke of Spain, and perhaps to uniting the fair star of Canada to the American constellation." But without waiting for the coöperation of the United States, Genet was to arouse the people of Kentucky and Louisiana by sending among them agents who should light the fires of revolution.

The first news of the revolution in France had kindled the warmest sympathy in the United States. Emotional individuals thought they saw the events of our own revolution mirrored in the stirring drama in France. The spectacle of the new republic confronting the allied monarchs of Europe thrilled those who had battled with the hirelings of George the Third. Civic feasts became the fashion; liberty caps and French cockades were donned; "the social and soul-warming term Citizen" was adopted by the more demonstrative. But there were those who did not sing "Ça Ira" and who foresaw the peril of a general European war.

Early in April, 1793, a British packet brought the news to New York that Louis XVI had been guillotined and that France was at war with England and Spain. The ominous tidings brought President Washington post-haste from Mount Vernon to Philadelphia. Summoning his advisers, he put before them the perplexing questions which had arisen in his mind. Neutrality was obviously the policy which national self-interest dictated; but neutrality seemed hardly compatible with our treaty obligations to France. In the treaties of 1778, the United

States had expressly guaranteed French possessions in America and had opened its ports to French privateers and their prizes, denying the privilege to her enemies. Hamilton argued rather fallaciously that these treaties were made by the King of France and were binding upon his successors alone; they were not in force after the Revolutionary Government had destroyed the monarchy. Furthermore, the guaranty did not apply to an offensive war such as that which France was now waging. Jefferson and Randolph took issue with Hamilton on these points; but all agreed that neutrality must be preserved. On April 22, the President issued a proclamation, which, avoiding the word "neutrality," declared that the United States was at peace with both France and Great Britain, and warned all citizens to avoid all acts of hostility.

The proclamation was well-timed, for Genet had already landed at Charleston and had begun his extraordinary career as revolutionary agent of the Gironde. He found the ground well watered for the seeds of revolution. In Georgia and South Carolina, the frontiersmen were smarting under the repeated depredations of the Cherokees and Creeks and eager to put an end to Spanish ascendancy in that quarter. Under these circumstances it was no difficult matter to arrange for expeditions against St. Augustine from the Georgia frontier, and against New Orleans from South Carolina by way of the Tennessee River and the Mississippi. Assuming that the United States was already enlisted in the cause by the treaties of 1778, Genet sent out orders to French consuls, bid-

ding them set up courts of admiralty for the trial of prize cases, and even dispatched privateers from the port of Charleston to prey upon British vessels. Before Genet could reach Philadelphia, the French frigate L'Ambuscade had captured the Little Sarah in lower Delaware Bay, and had anchored with her prize in the river opposite the city.

From Charleston, Genet made a triumphal progress to Philadelphia, receiving on all sides demonstrations which convinced him that the heart of the nation beat in unison with that of France. He was therefore much disconcerted and angered by the studied reserve of the President, to whom he presented his credentials in Philadelphia. What a contrast between the liberty-loving populace and this haughty aristocrat who kept medallions of Capet and his family upon his parlor walls! At a banquet in Oeller's Tavern, however, Genet received the sort of demonstrations which his French heart craved. There, amid poetic declamations and many libations to the Goddess of Liberty, he and his hosts donned the crimson cap of liberty and sang with infinite zest the new "Marseillaise." Even a well-balanced mind might have become convinced that the Administration and the people were out of accord.

On the threshold of his career at Philadelphia, Genet demanded an advance payment on the debt which the United States owed to France. The refusal of the Administration to supply him with funds embittered him still further. He now took up with vigor his revolutionary projects in the West. The proposal of George Rogers Clark to raise a force and take all

Louisiana for France reached him at this time and fitted in well with his general mission. Clark was given a commission as "Major General of the Independent and Revolutionary Legion of the Mississippi," and was promised the coöperation of frigates in his attack upon New Orleans. For this purpose Genet made haste to transform the Little Sarah into a privateer, under the very eyes of the Government. He was warned that he must not allow La Petite Democrate, as the vessel was rechristened, to put to sea. Nevertheless, in defiance of the state and federal authorities, the ship dropped down the bay and eventually put out to sea.

Up to this moment Genet's popularity was immense. Very probably this popular devotion to the cause of France was inspired in part by the factious opposition which was irritating the Administration on purely domestic issues. Nevertheless, Liberty, Equality, and the Rights of Man were phrases which appealed cogently to the democratic masses in the States. In imitation of the Jacobin Club, Democratic societies sprang up in all the considerable centers of population from Boston to Charleston. In these organizations the voice of the disfranchised classes was articulate for the first time. With unprecedented virulence these Democrats attacked not only policies but personalities. Washington was libeled in such scurrilous fashion that even his composure broke down on one occasion, so Jefferson records; and he declared in a passion that by God! he had rather be in his grave than in his present situation.

After the Little Democrat episode, however, popular

sentiment began to grow cold toward Genet. His plans failed to carry; and he was reported to have exclaimed in a moment of irritation that he would appeal from the President to the people. This was the last straw. All but his most radical followers deserted him. The Administration now determined to demand his recall. But events in France had already terminated Genet's career. The Girondist party had fallen and the triumphant Jacobins had no use for an agent who had served the discredited faction. In February, 1794, Genet was replaced by Fauchet and his revolutionary mission ended with his official duties.

From the moment when France declared war upon Great Britain to the exile of Napoleon two decades later, the United States as a neutral nation was incessantly menaced by the aggressions of one or the other of the belligerents. A faithful picture of American politics must set the stirring events of this epoch against the forbidding background of European intrigue and war. In this struggle the supremacy of the seas fell to Great Britain. However victorious on European battlefields, French armies were powerless to defend the colonial possessions in the West Indies. Cut off from France the colonies could only maintain themselves by direct trade with neutrals like the United States. But by the so-called rule of 1756, neutral commerce was forbidden under these conditions. Ports closed to neutral commerce in time of peace might not be thrown open in time of war. Flinging consistency to the winds, the French Convention decreed in February, 1793, that neutral states might trade with her colonies on the

same terms as French vessels. That Great Britain would refuse to sanction this trade was fully expected. It was inevitable that Great Britain would treat neutrals who accepted the French invitation as having forfeited their neutrality.

With little or no thought of probable consequences, fleets of merchantmen set sail from Boston, Philadelphia, and other ports in the spring of the year, with cargoes of fish and grain to barter for sugar, coffee, and rum at Martinique, Antigua, and St. Kitts. The traffic promised to be most lucrative. But disaster overtook many a gallant vessel before she could reach her destination. In June, British orders in council instructed English cruisers to detain all vessels bound for a French port with corn, flour, and meal, and to purchase such supplies as were needed. Such vessels were then to be allowed to proceed to any port of a state with which His Majesty was living in amity. The skipper who had anything worth taking to a foreign port after an experience of this sort was lucky indeed. In November orders were issued for the seizure of all vessels laden with French colonial products or carrying provisions to any French colony.

Tales of outrages perpetrated under the British orders in council soon began to reach the home ports of the West India merchantmen. Doubtless these tales lost nothing in the telling, but the unimpeachable fact remains that scores of American ships were seized and libeled in admiralty courts set up in the British West Indies. Nor did the British naval officers hesitate to impress seamen who were sus-

pected of being British subjects. Republican opponents of the Administration, who had felt the proclamation of neutrality as a rebuff to our old ally, France, were now confirmed in their hostility to Great Britain. To their minds ample cause for war existed.

The policy which Jefferson and Madison would have forced upon the Administration was one of retaliation. In a report to Congress Jefferson proposed that whenever our commerce was laid under restrictions by a foreign nation, similar restrictions should be put upon the trade of the offending state. By pacific coercion, the United States would oblige foreign states to make favorable commercial treaties. Madison urged this policy upon Congress in a series of resolutions; but the supporters of the Administration pointed out that retaliatory measures would sacrifice the trade with Great Britain, which furnished seven eighths of the total imports into the country. It was plain that the mercantile classes which upheld the Administration did not desire either war or retaliatory legislation, however much they might be suffering from British depredations. The resources of diplomacy were not yet exhausted. Might not a treaty be secured which would open up the British West India trade?

Upon the news of the offensive orders in council of November, which reached Philadelphia in the following March, public feeling veered strongly toward war. At the same time with tales of new outrages at sea came a not very well authenticated but commonly accepted report of Lord Dorchester's speech

to the Indians of the Northwest, in which he assured his dusky hearers that war was imminent between his country and the United States. Congress now began to prepare for the inevitable. Appropriations were made for the fortification of harbors and the collection of military stores. The depredations of the Algerine pirates in the Mediterranean gave excuse for the building of six frigates. An embargo was laid upon commerce for thirty days and then extended over another thirty days. Dayton, of New Jersey, alarmed the administration party by proposing the sequestration of all British debts as an indemnity for the vessels which had been seized by British cruisers.

A rift now appeared in the war cloud. Early in April, Washington received intelligence of a new order in council dated January 8, 1794, which only forbade trade between the French colonies and Europe, leaving American vessels to trade freely with the French West Indies. Washington seized the opportune moment to test the resources of diplomacy. On April 16, he sent to the Senate the nomination of Chief Justice John Jay as Envoy Extraordinary to the Court of St. James. Three days later the nomination was confirmed, and by the middle of May, Jay was on his way to England upon the most difficult mission of his diplomatic career.

While Jay was pressing American grievances upon Lord Grenville, not the least of which was the retention of the Western posts by British garrisons, events occurred near one of the unsurrendered posts which might easily have brought on war. The humili-

ating defeat of St. Clair in 1791 had left the settlers beyond the Ohio at the mercy of the Indians. British authorities in Canada encouraged the Indians to believe that by combination they could check the advance of the whites. An Indian territory under British protection would have served the purposes of Great Britain admirably. To forestall these designs President Washington appointed to command in the Northwest Anthony Wayne — "Mad Anthony" of Revolutionary days. With a caution and thoroughness which belied his reputation, Wayne spent nearly two years in recruiting and drilling an army. Every effort in the mean time to conciliate the Indians was made futile by the machinations of their British advisers. By the spring of 1794, Wayne had an army sufficiently trustworthy to undertake a forward movement. His route lay down the Maumee River, at the rapids of which Lieutenant-Governor Simcoe had built a fort and stationed a small garrison, in anticipation of an American attack upon Detroit, which was supposed to be Wayne's objective. At a place known as Fallen Timber, a few miles south of the rapids, on August 18, Wayne found the Indians ready to offer battle. They had chosen their ground with considerable skill, but Wayne employed his cavalry and infantry so effectively that he drove the redskins from cover and pursued them with great slaughter almost to the walls of the British fort. The British commander demanded an explanation. Wayne replied with a taunt which amounted to a challenge and which was probably intended to be such, but the British re-

fused to be drawn into hostilities. Had Wayne attacked and dispersed the British garrison, he would hardly stand condemned at the bar of history, for by the Treaty of Paris not he, but the British commander, was the intruder on foreign soil. Nevertheless, war at this time would have made Jay's mission futile and might have sacrificed the whole Mississippi Valley.

The Administration had hardly time to applaud Wayne's victory when it was greatly perturbed by an insurrectionary movement in western Pennsylvania. The sturdy Scotch-Irish people of the southwestern counties beyond the mountains had always felt their aloofness from the eastern counties. They were now still further disaffected because of the federal tax on spirituous liquors. They shared the feeling of the Continental Congress, which in 1774 had declared an excise "the horror of all free states." Even before the incidence of the tax was fully felt, protests were drafted at mass-meetings and federal collectors were roughly treated. The tax fell with heavy weight upon the small farmer. Whiskey was not merely his chief marketable commodity: it was also his medium of exchange when money was scarce. A tax on his still seemed to be an unfair discrimination. Such was the pitch of public feeling in the year 1793 that farmers who complied with the law had their stills wrecked by masked men, popularly known as "Whiskey Boys."

Early in July, 1794, the marshal of the district court of Philadelphia attempted to serve writs against distillers in the western counties who were charged

with breaking the law. He chose his time unwisely, for the farmers were in the midst of harvesting, and liquor was circulating freely among the laborers. In serving his last writ, he was threatened by a number of reapers. This was the spark needed to start a conflagration. On the next morning the house of a revenue inspector, Neville, was attacked and blood was shed. A small detachment of soldiers from Fort Pitt was stationed at the house; but on the following day they were fired upon and forced to surrender, and the house of the inspector was burned. The marshal and the inspector fled the country. Matters went from bad to worse. The mail was robbed; the militia was summoned to meet at Braddock's Field for the avowed purpose of attacking the garrison at Fort Pitt; but there the courage of the leaders evaporated. The attack upon the garrison was commuted into a boisterous march through the streets of Pittsburg, whose citizens purchased immunity by liberal donations of whiskey to the thirsty rioters.

On August 7, 1794, the President issued a proclamation commanding the insurgents to disperse, and summoned twelve thousand militia from the adjoining States to hold themselves in readiness for active service on the 1st of September. Meanwhile, earnestly desiring to avoid the use of force, Washington sent three commissioners to the scene of the riots in the hope of appealing to the sober sense of the people. They held protracted negotiations with representatives of the people in the disaffected district, but were unable to persuade them to deliver up the ringleaders of the revolt. On September 24,

the President issued a second proclamation and set the troops in motion. Under the command of "Light Horse Harry" Lee, now Governor of Virginia, the army marched west in two divisions, but encountered no resistance. Many arrests were made and eighteen alleged leaders of the insurrection were sent to Philadelphia for trial. Only two of these, however, were convicted of treasonable conduct, and they were pardoned by the President. Some twenty-five hundred troops were quartered near Pittsburg for the winter; but rebellion did not again lift its head.

The utter collapse of the Whiskey Rebellion made the whole affair seem ridiculous to those who gathered in the coffee-houses to hear the tales of the militiamen; but the importance of the episode was not slight. Hamilton is said to have remarked on one occasion that a government can never be said to be established "until some signal display of force has manifested its power of military coercion." The Federal Government had now demonstrated that it was equal to the emergency whenever the laws were opposed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by law. The days of Shays' Rebellion had gone, never to return.

There was an aspect of the insurrection which Washington did not fail to note in his annual address to Congress in November, 1794. The Democratic clubs had been unsparing in their condemnation of the excise law, and their resolutions had more than once a treasonable sound. Washington did not hesitate to deprecate the untoward influence of these

"self-created societies" and to condemn those "combinations of men, who, careless of consequences, and disregarding the unerring truth that those who rouse cannot always appease a civil convulsion, have disseminated, from an ignorance or perversion of facts, suspicions, jealousies, and accusations of the whole Government." The Democratic societies now fell into disrepute and did not long survive their great prototype, the Jacobin Club of Paris.

Although Jay had presented his credentials in June, 1794, it was the 19th of November before a treaty was signed; and it was not until the 8th of June, 1795, that Washington could send an authentic copy to the Senate. The most dispassionate member of that body must have confessed privately to a sense of disappointment as he heard the terms for the first time. Listening intently for the redress of grievances, he seemed to hear only concessions. The United States was to assume the debts still unpaid to British merchants since the peace, so far as "lawful impediments" had been put in the way of their collection; to open all ports to British ships on the footing of the most favored nation; and to make restitution for losses and damages to the property of British subjects occasioned by French privateers in American waters, whenever compensation could not be obtained in the ordinary course of justice. And for all these concessions what had been gained? The promise to evacuate the Western posts? That was but a tardy redemption of an old promise. No mention was made of the negroes carried away by British armies during the war. Nothing was said

about the impressment of American seamen. To be sure, the ports of the East Indies were to be opened to direct commerce with the United States; but no American vessel might engage in the coasting trade of these East India dependencies. As for the West India trade, only vessels of seventy tons burden might participate, and even that concession was yielded on the express understanding that molasses, sugar, coffee, cocoa, and cotton should not be exported from the United States to any part of the world. After hearing this obnoxious twelfth article, few Senators could preserve a fair mind on the remaining provisions of the treaty.

The historian is in a better position to evaluate the treaty. To the cause of international arbitration, Jay and Grenville made a distinct contribution. They provided for three commissions which were to settle the uncertain boundaries of the United States on the northeast and northwest; to adjudicate the claims of British creditors; and to adjust the claims of those citizens of the United States whose ships and cargoes had been seized in the West India trade, and on the other hand, the claims of those British subjects who had suffered losses through French privateers in American waters. Moreover, an agreement was reached on what should in future be regarded as contraband, and on the treatment of vessels which should be captured on suspicion of carrying enemies' property or contraband.

There were two cogent reasons for ratifying the treaty despite its defects: it provided for indemnity in respect to recent seizures on the high seas; and it

averted war. But no arguments could justify the surrender of American trade in the West Indies, to the minds of either the New England shipper or the Southern planter, for while the latter might be indifferent to other considerations, he would not willingly part with his right to ship his cotton crop, now becoming every year more valuable. The requisite two-thirds vote of the Senate was secured only by dropping out altogether the objectionable twelfth article.

The publication of the treaty was followed by an outburst of popular indignation which made even the President wince. Remonstrances and protests poured in upon him from every part of the Union. The sailors and shipowners of Portsmouth burned Jay and Grenville in effigy, together with a miniature ship of seventy tons. In Charleston, the flags were put at half-mast and the public hangman burned copies of the treaty in the open street. While remonstrating with a disorderly crowd in Wall Street which was vilifying Jay, Hamilton was stoned and forced to give way with the blood streaming down his face. Personal abuse of the coarsest kind was heaped upon Washington by the opposition press, while a host of pamphleteers assailed him under cover of anonymity. Congress expressed its hostility toward the President by omitting to congratulate him on his birthday.

In the face of this denunciation, Washington might well have hesitated to press the ratification of the amended treaty upon Great Britain. His perplexities were further increased by the tidings that

the Ministry had renewed the earlier orders for the seizure of provisions on neutral vessels bound for French ports. Hamilton was of the opinion that the President should insist upon the withdrawal of this order in council and upon the acceptance of the Senate amendment before he ratified the treaty. The delicate task of securing the consent of Great Britain to these conditions was entrusted to John Quincy Adams, then Minister at The Hague.

Meanwhile the skies cleared in the Northwest. Wayne's punitive expedition had done its work. With their towns destroyed and their crops ruined, the Indians had passed a terrible winter. By the following summer they were ready to sue for peace. In a great council at Greenville, on August 4, 1795, they agreed to a treaty which ceded to the United States all the region south and east of a line running from the intersection of the Kentucky and Ohio Rivers to Lake Erie. Only one thing was needed to secure the Northwest and that was the evacuation of the British posts.

During this same summer, Thomas Pinckney, at the Court of Madrid, was trying to secure the liberation of the Southwest from the control of Spain. On October 27, 1795, the treaty of San Lorenzo was signed, which conceded the thirty-first parallel as the northern boundary of West Florida from the Mississippi to the Apalachicola. This was in itself a notable achievement; but even more important to the people of the Western world was the declaration that the Mississippi River should be open to their commerce with the right of deposit at New Orleans.

The mission of Adams at the Court of St. James was not less successful. The Ministry agreed to modify the objectionable order in council and to accept the treaty without the twelfth article. With a deep sense of relief Washington promulgated the treaty as the law of the land on February 27, 1795. With these three treaties of 1795, not only was war averted, but our slender hold upon the vast tract between the Alleghanies and the Mississippi immeasurably strengthened, if not secured for all time.

BIBLIOGRAPHICAL NOTE

The attitude of historical writers toward the events recorded in this chapter has been considerably altered since the publication of a series of articles by F. J. Turner. The more important of these contributions are: "The Origin of Genet's Projected Attack on Louisiana and the Floridas" (*American Historical Review*, III); "The Policy of France toward the Mississippi Valley" (*Ibid.*, X); and "The Diplomatic Contest for the Mississippi Valley" (*Atlantic Monthly*, XCIII). Nearly all the authorities cited in the foregoing chapter deal in greater or less detail with the diplomatic events of Washington's Administrations. The following may be added to the list: Trescott, *Diplomatic History of the Administrations of Washington and Adams* (1857); F. A. Ogg, *The Opening of the Mississippi* (1904); C. D. Hazen, *Contemporary American Opinion of the French Revolution* (1897). The story of the expeditions against the Indians of the Northwest is told by Roosevelt, *Winning of the West* (vol. IV). A reliable account of the Whiskey Insurrection is given in Brackenridge, *History of the Western Insurrection* (1859).

CHAPTER V

ANGLOMEN AND JACOBINS

In January, 1795, Hamilton retired from the Treasury Department. The moment was well chosen, for his great creative work was done and signs were not wanting that the initiative in finance was about to pass to the House of Representatives. As he passed out of office, a young Representative from Pennsylvania made his appearance in Congress who was scarcely his inferior in quick grasp of the intricacies of public finance. Almost the first efforts of Albert Gallatin were directed to the improvement of the methods of congressional finance. It was at his suggestion that the first standing Committee of Ways and Means in the House was appointed, in the expectation that it would assume a general superintendence of finance. Believing that the Executive could be held in check only by systematic, specific appropriations, Gallatin became an insistent advocate of the rule, and in consequence a thorn in the flesh of the departments. "The management of the Treasury," complained Wolcott to Hamilton, "becomes more and more difficult. The legislature will not pass laws in gross. Their appropriations are minute; Gallatin, to whom they yield, is evidently intending to break down this department, by charging it with an impracticable detail." "The heads of departments," Fisher Ames wrote despondently, two years

after Hamilton left office, "are chief clerks. Instead of being the ministry, the organs of the executive power, and imparting a kind of momentum to the operation of the laws, they are precluded even from communicating with the House by reports." There was no room for a British ministry in the Republican scheme of politics.

Meantime, Washington's foreign policy had widened the breach between the political factions and had forced him into a partisan position. From the Republican point of view, Jay's treaty threw the United States into the arms of England and gave just cause of offense to France. Knowing the popular temper, which was undoubtedly hostile to the treaty, the Republican leaders endeavored to defeat the purposes of the Administration by refusing to vote the necessary appropriations. Their first demand was for the papers relating to the treaty, on the ground that in matters upon which the action of the House was needed, that body might properly call for information to guide its deliberations. The President refused this demand, both because he deemed it imprudent to make the papers public, and because he denied the right of the House to participate in the treaty-making power.

The debate which followed is one of the most illuminating in the early history of Congress. The trend of argument may be suggested by two remarks of opposing partisans. Said Griswold for the Federalists, "The House of Representatives have nothing to do with the treaty but provide for its execution." Disclaiming that the House was bent upon impair-

ing the constitutional right of the President and Senate to make treaties, Gallatin contended that the power claimed by the House was "only a negative, a restraining power on those subjects over which Congress has the right to legislate." In vigorous resolutions the House sustained Gallatin's position; and the appropriation for the treaty was carried only by the casting vote of the Speaker, on April 29, two months after Washington by proclamation had declared the treaty to be the law of the land.

The consequences of the *rapprochement* between the United States and Great Britain were far-reaching. The French Minister, Fauchet, urged his Government to take immediate steps to acquire a continental colony which would not only serve France and her West India colonies as a granary and as a market for their exports, but which would also bring pressure to bear upon the disaffected border communities of the United States. Such a colony was Louisiana. With this province in her possession, a power like France would speedily control the Mississippi and the Western people who used that highway for their commerce. Throughout the year 1795, the French Government sought by persuasion and threats to secure Louisiana from Spain as the price of an alliance.

How far the Administration was apprised of these designs is not clear; but against the background of French intrigue certain passages of Washington's Farewell Address take on a new significance. The West was warned that it could control "the indispensable outlets for its own productions" only by

attaching itself firmly to "the Atlantic side of the Union." "Any other tenure . . . whether derived from its own separate strength, or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious." And the admission of Tennessee as a State in the year 1796 may have been hastened by an ill-defined fear that the people of the West might not be proof against French machinations.

The purpose of Washington not to accept a re-election was known to his intimates early in the spring of 1796. Upon whom would his mantle fall? There was much searching of hearts among Federalist leaders, but by the end of the summer it was well understood that Federalist electors would support John Adams and Thomas Pinckney for the Presidency and Vice-Presidency. The most talented man in the party was unquestionably Alexander Hamilton; but Hamilton had made too many enemies to be a popular candidate. By common consent, Thomas Jefferson became the candidate of the Republicans for President; with him was associated Aaron Burr, of New York.

The most remarkable aspect of the campaign of 1796 was the undisguised attempt of Adet, who had succeeded Fauchet, to turn the election in Jefferson's favor. The treaty with England could not be undone; but France had much to hope from a Republican administration. In a series of letters directed to the Secretary of State, but printed in the Philadelphia *Aurora*, Adet announced that the Directory regarded the treaty of commerce concluded with

Great Britain as "a violation of the treaty made with France in 1778, and equivalent to a treaty of alliance with Great Britain." "Justly offended," the Directory had ordered him to "suspend his ministerial functions with the Federal Government." This action, however, was not to be regarded as a rupture between the two peoples, but only "as a mark of just discontent, which is to last until the Government of the United States returns to sentiments and to measures, more conformable to the interests of the alliance, and the sworn friendship between the two nations."

Adet would have had the people believe that the alternatives were Jefferson or war; and the threat of war, so it was said, was enough to drive the peace-loving Quakers of Pennsylvania into the Republican ranks. In more northerly States Adet's manifesto probably had the opposite effect. "There is not one elector east of the Delaware River," declared the Connecticut *Courant*, "who would not sooner be shot than vote for Thomas Jefferson." Not a Republican elector was chosen in the States to the north and east of Pennsylvania. On the other hand, Adams received only two electoral votes south of the Potomac. South Carolina divided its vote between Jefferson and Pinckney. Only unexpected votes in Virginia and North Carolina gave Adams the election, for Pennsylvania was carried by the Republicans. Pinckney lost the Vice-Presidency through the defection of Federalists in New England.

An incident of the election in Pennsylvania re-

vealed the change already wrought by parties in the Constitution. The framers of the Constitution expected that a small number of persons selected by their fellow citizens from the general mass would deliberately weigh "all the reasons and inducements which were proper to govern their choice," and in their mature wisdom choose the individual who met the requirements of the office. It fell out otherwise. In Pennsylvania, one of the six States to choose electors by popular vote, each party had put forward a ticket with fifteen names. Thirteen of the fifteen Republican electors were chosen. Of the two Federalist electors who were chosen, one broke faith with his party and cast his vote for Jefferson and Pinckney. The Federalists were exasperated by this treachery. "What!" expostulated a writer in the *United States Gazette*: "Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to *act*, not to *think*."

While Adet was endeavoring to bring what the Federalists called the French party into power, the Administration was urging the reluctant Monroe at Paris to make the Jay Treaty as palatable as possible to the French Government. This was an irksome task for that ardent Republican. From the outset of his mission he found it difficult to sustain that detachment from French politics which his position demanded. Moreover, after having assured the French Government that Jay was negotiating at London only for the redress of grievances and not for a commercial treaty, Monroe found it peculiarly humiliat-

ing to be obliged to confess that he had been kept in ignorance of the real trend of negotiations. Under these circumstances, he temporized and gave only half-hearted attention to the task of placating the Directory. Hamilton now advised his recall; and Washington, who had on two occasions expressed his displeasure with Monroe's conduct, determined to send Charles Cotesworth Pinckney in his stead.

Trivial as this incident seems, it was not without its effect upon the course of diplomacy abroad and of politics at home. When Monroe endeavored to put his successor into touch with the French Foreign Office, he was told that the Directory was not prepared to receive another American representative until their grievances had been redressed. This affront left Pinckney in an embarrassing position, for until his credentials were accepted, he was liable, like all foreigners at that time, to arrest as a spy. It was not until February, after many months of waiting, that he was given his passport. He at once crossed the border and took up his residence at Amsterdam.

Meantime, Monroe had taken his departure with the warmest expressions of regard on the part of the French Government. He was assured that his worth and his efforts in behalf of his country's interests were understood and appreciated. He returned to the United States with the firm conviction, which his Republican friends shared, that he had been made the victim of Federalist chicanery. In the following year he published an elaborate defense which served admirably as a popular campaign document in the next presidential elections.

It fell to John Adams on the very threshold of his administration to deal with what he euphemistically called the misunderstanding with France. His inaugural address announced unmistakably his intention to preserve neutrality between the belligerents of Europe, and to treat France with impartiality but with a sincere desire for her friendship. Between the lines may be read also an equally sincere desire to placate the opposition and to free himself from all imputation of a bias toward Great Britain and a monarchical system. From the first news of Pinckney's dismissal, President Adams was disposed "to institute a fresh attempt at negotiation": he even approached Jefferson to see if he would not persuade Madison to serve on a special commission, believing that Madison's well-known Gallic sympathies would commend him to the French nation. At the same time he declared stoutly in a message to Congress, in special session on May 15, that France had treated the United States "neither as allies nor as friends nor as a sovereign state." Attempts which had been made to create a rupture between the people of the United States and their Government "ought to be repelled with a decision which shall convince France and the world that we are not a degraded people humiliated under a colonial spirit of fear and sense of inferiority." While he therefore recommended measures of defense, he asked the Senate to confirm the appointment of three commissioners whom he proposed to send to France. Two of these, Pinckney and John Marshall, were Federalists, but the third was Elbridge Gerry, a Massachusetts Republican, who

was the second choice of the President, Dana having declined to serve.

While Congress was acting upon the President's recommendations and voting appropriations for fortifications and for the completion of the three frigates which were then on the stocks, disquieting disclosures came from the West. Spain having declared war upon England in the previous fall, British emissaries, it was rumored, were concerting plans for the conquest of New Orleans and West Florida. While expeditions made up of Western frontiersmen and Indians descended upon the Spanish strongholds in the Southwest, a British fleet was to blockade the mouth of the Mississippi. The evidence which President Adams laid before Congress in July implicated Senator Blount, of Tennessee. In common with other land speculators, he had become alarmed at the rumor that France was about to acquire Louisiana, and had agreed to use his influence among the whites and Indians of the Southwest, where he had formerly been governor, to assist the designs of Great Britain. He was expelled from the Senate and impeached. Before his trial could take place, he was elected a member of the legislature of Tennessee, and from that point of vantage he successfully defied the federal authorities.

The episode had unfortunate consequences: it aroused the distrust of the Spanish Government and delayed the surrender of Natchez and other posts which Spain had agreed to cede in the Treaty of 1795; and it furnished Talleyrand, who had become Minister of Foreign Affairs under the Directory,

with an additional argument for the cession of Louisiana to France. France in control of Louisiana and Florida would be "a wall of brass forever impenetrable to the combined efforts of England and America."

Early in March, 1797, dispatches arrived from the envoys which were full of sinister disclosures. On the 19th, President Adams announced gloomily that he perceived "no ground of expectation" that the objects of the mission could be accomplished "on terms compatible with the safety, honor, or the essential interests of the nation." He renewed his recommendations of measures of defense "proportioned to the danger." The average Republican regarded this message as tantamount to a declaration of war. Jefferson spoke of it as "an insane message." The partisan press held it to be further proof of British bias in John Adams, the old aristocrat! But when the President sent to Congress the deciphered dispatches, and the newspapers had printed extracts from them, a wave of indignation swept over the country. For the moment the wildest partisan of France was silenced.

The envoys told a sordid tale of French intrigue and greed. It appeared that they had never been received officially when they made known their presence on French soil, but had been approached by agents of Talleyrand, whom they referred to in the dispatches as Mr. X, Mr. Y, and Mr. Z. They were much mystified by the language used by these gentlemen, until the evening of October 18, when Mr. X called on General Pinckney and whispered that he

had a message from Talleyrand. "General Pinckney said he should be glad to hear it. Mr. X replied that the Directory, and particularly two of the members of it, were exceedingly irritated at some passages of the President's speech, and desired that they should be softened; and that this step would be necessary previous to our reception. That, besides this, a sum of money was required for the pocket of the Directory and Ministers, which would be at the disposal of M. Talleyrand; and that a loan would also be insisted on. Mr. X said if we acceded to these measures, M. Talleyrand had no doubt that all our differences with France might be accommodated. On inquiry, Mr. X could not point out the particular passages of the speech that had given offense, nor the quantum of the loan, but mentioned that the *douceur* for the pocket was twelve hundred thousand livres, about fifty thousand pounds sterling."

Unwilling to believe their ears, the astonished envoys asked to have these proposals put in writing. Mr. X not only complied with this request, but brought with him Mr. Y, a confidential friend of Talleyrand, who repeated the terms upon which the envoys would be received, and pointed out convenient means by which the money could be secretly transferred.

The American commissioners responded that while they had ample powers to make a treaty, they had none to make a loan. They offered, however, to send one of their number to America for further instructions, provided that the Directory would check the further capture of American vessels. Nevertheless,

the efforts of X and Y to secure the *douceur* were not relaxed. Finally, finding the envoys either obstinate or obtuse, Mr. X exclaimed, "Gentlemen, you do not speak to the point. It is money; it is expected that you will offer money." The Americans were inexorable. "What is your answer?" asked X impatiently. "It is," said the envoys, "no, no; not a sixpence."

On November 1, the commissioners agreed to hold no more indirect intercourse with the Government, but to prepare a statement of the American grievances against France and to send it to Talleyrand. Two weary months passed before they received his answer. Couched in language which was both contemptuous and insulting, this reply of Talleyrand terminated the mission. The Directory intimated that in future they would treat only with Gerry as "the more impartial" member of the commission. Pinckney and Marshall remonstrated against this discrimination, but Gerry unwisely consented to deal with Talleyrand alone. Marshall secured a passport with some difficulty and departed for home. Pinckney with more difficulty secured permission to retire to southern France with his invalid daughter.

The war spirit now ran high. President Adams declared that he would never send another minister to France without assurances that he would be "received, respected, and honored as the representative of a great, free, powerful, and independent nation," and the people supported this declaration with surprising unanimity. Demonstrations occurred in all the playhouses of Philadelphia and New York; young

men formed associations and donned the black cockade as an emblem of patriotic devotion; even in the quiet towns of New England, women met to drink tea and to sing the new song "Adams and Liberty." Cities along the coast vied with one another in their eagerness to build warships. The patriotic fervor found expression in original song and verse. "Hail Columbia" was the happy inspiration of young Joseph Hopkinson, of Philadelphia. For once in his life President John Adams found himself a popular hero riding on the crest of public applause.

To the intense disgust of Jefferson, even Republicans caught the war fever, and joined with the Federalists in putting the country on a war footing. Among the earliest measures of Congress was an act providing for the establishment of a Navy Department. In rapid succession followed acts authorizing the President to permit merchantmen to arm in their own defense and our warships to seize French vessels which preyed upon our commerce. On July 7, the existing treaties with France were repealed. In short, without a formal declaration, the United States was virtually at war with France. The new navy soon put to sea and gratified national pride by several gallant victories, the most notable being the capture of the frigate L'Insurgente by the newly commissioned Constellation, on February 9, 1799. When peace was restored in 1800, the navy had a record of eighty-four prizes, most of which were French privateers.

The organization of the provisional army did not move so rapidly, partly because of the incompetence of the Secretary of War, and partly because of an

unseemly wrangle for precedence among the three major-generals whom Adams had named. Conscious of his own inexperience in military affairs, President Adams had persuaded Washington to take chief command of the army with the distinct understanding that he would not be called into active service unless an emergency arose. Washington named Hamilton, C. C. Pinckney, and Knox as major-generals, and the President sent the nominations to the Senate in this order. Misunderstandings arose at once as to the relative rank of these three major-generals. Hamilton and his intimates in the circle of the President's advisers urged that as his name was first on the list he was the ranking officer. At this Knox took umbrage, for he had outranked Hamilton in the old army; and so, too, had Pinckney. Knowing the intrigue in Hamilton's behalf and not a little alarmed at the prospect of having the direction of the war pass into the hands of a man whom he regarded as a rival, Adams determined to sign the commissions in the reverse order, thus giving Knox precedence. The friends of Hamilton were enraged at this turn of affairs and prevailed upon Washington to write a letter of protest to the President. Adams was finally persuaded to date all three commissions alike and to leave the designation of rank to the commander-in-chief. Washington promptly named Hamilton as inspector-general with precedence over Pinckney and Knox; whereupon Knox refused to serve.

The immediate outcome of this controversy was to widen the rift which was already separating the President from the faction led by Hamilton. Adams

had taken office in the belief that Washington's cabinet advisers were loyal to him. "Pickering and all his colleagues are as much attached to me as I desire," he had written just before his inauguration. But he speedily found that all were accustomed to look to Hamilton as the virtual leader of the Federalist party. Moreover, he found himself thrust into the background in the matter of military appointments, as soon as Hamilton took over the actual work of organizing the army. The Constitution made him commander-in-chief; circumstances seemed to conspire, he complained bitterly, "to annihilate the essential powers given to the President." He had, too, all the natural aversion of a civilian for military affairs. "Regiments are costly articles everywhere," he told McHenry testily, "and more so in this country than in any other under the sun. And if this country sees a great army to maintain, without an enemy to fight, there may arise an enthusiasm that seems to be little foreseen."

It would have been strange, indeed, if under these circumstances the President had not scanned the horizon anxiously for the faintest intimations of peace. In October, 1798, definite assurances were given by Talleyrand, through our Minister at The Hague, that France would receive a new minister from the United States. On February 18, 1799, the President confounded both friends and foes by sending to the Senate the nomination of Vans Murray to be Minister to France. The emotions of the militant Federalists were too various to admit of description. It would have been madness, however, not to

accept the proffered olive branch. Swallowing their wrath, they agreed to the mission, but substituted a commission of three for a single minister.

From Napoleon, the new master of France, the commissioners secured a convention which not only restored peace, but safeguarded the rights of neutrals, by restraining the right of search and conceding the principle that free ships make free goods. Napoleon consented also to the abrogation of the treaties of 1778, but only upon condition that the new treaty should contain no provision for the settlement of claims for indemnity. John Adams was not far from the truth when he accounted this peace one of the most meritorious actions of his life. "I desire no other inscription over my gravestone," he wrote fifteen years later, "than: 'Here lies John Adams, who took upon himself the responsibility of the peace with France in the year 1800.'"

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CHAPTER VI

THE REVOLUTION OF 1800

THE greatest obstacle in the path of the people of the United States in their struggle toward national life was the vastness of the territory which they occupied. Even the region between the Alleghanies and the sea was as yet imperfectly subdued. Great tracts of wilderness separated communities beyond the fall-line of the rivers. Intercourse was incredibly difficult even between the commercial ports of New England and the Middle States. Stage-coaches plied between Boston and New York, to be sure, and between New York and Philadelphia. By stage, too, a traveler could reach Baltimore and Washington in the course of time. But beyond the Potomac public conveyances were few and uncertain in their routes. The only public stage in the Carolinas and Georgia plied between Charleston and Savannah. Those whom either public or private business forced to journey from these remote Southern States to Philadelphia took passage in coasting vessels. It is difficult to say which were greater, the perils by land or by sea. Writing from Philadelphia in 1790, William Smith, of South Carolina, described the misfortunes of his fellow Congressmen in trying to reach the seat of government, as follows: "Burke was shipwrecked off the Capes; Jackson and Mathews with great difficulty landed at Cape May and traveled one hundred

and sixty miles in a wagon to the city. Burke got here in the same way. Gerry and Partridge were overset in the stage; the first had his head broke and made his *entrée* with an enormous black patch; the other had his ribs sadly bruised and was unable to stir for some days. Tucker had a dreadful passage of sixteen days with perpetual storms. I wish these little *contretemps* may not sour their tempers and be inauspicious to our proceedings."

Even in the North, where distances were not so great and where great arms of the ocean did not penetrate so far inland, as in North Carolina, for example, interposing so many barriers to communication, travel was painfully slow and hazardous. Travelers who made the journey from Boston to New York by stage-coach accounted themselves lucky if they reached their destination in six days, for no bridges spanned any of the great waterways and the crossing by ferryboats was uncertain and often dangerous. Many travelers preferred to journey by water from port to port, but coasting vessels, contending with the winds and the tides, were often nine or ten days in sailing from Boston to New York.

The post traveled with somewhat greater speed; yet a letter sent from Portland, Maine, could not be delivered in Savannah, Georgia, in less than twenty days. From Philadelphia a post went to Lexington, Kentucky, in sixteen days, and to Nashville, Tennessee, in twenty-two days. The cost of these posts, like the cost of traveling, was in many cases prohibitive. The rate for a letter of a single sheet was twenty-five cents. News traveled slowly from State to State.

The best news sheets in New York printed intelligence from Virginia which was almost as belated as that which the packets brought from Europe.

With such barriers in the way of intercourse, the masses, so far indeed as they possessed the suffrage at all, were not politically self-assertive. Devoted primarily to the pursuit of agriculture and commerce, essentially rural in their distribution, the people had neither the desire nor the means, nor yet the leisure, to engage in active politics. Politics was the occupation of those who commanded leisure and some accumulated wealth. The voters of the several States touched each other only through their leaders. In these early years national parties were hardly more than divisions of a governing class. Party organization was visible only in its most rudimentary form — a leader and a personal following. The machinery of a modern party organization did not come into existence until the railroad and the steamboat tightened the bonds of intercourse between State and State, and between community and community.

In another respect political parties of the Federalist period differed from later political organizations. Under stress of foreign complications, Federalists and Republicans were forced into an irreconcilable antagonism. The one group was thought to be British in its sympathies, the other Gallic. In the eyes of his opponents, the Republican was no better than a democrat, a Jacobin, a revolutionary incendiary; and the Federalist no better than a monocrat and a Tory. The effect was denationalizing. Each lost confidence in the other's Americanism.

The Federalists, in control of the Executive, — and thus, in the common phrase, "in power," — were disposed to view the opposition as factious, if not treasonable. Washington deprecated the spirit of party and thought it ought not to be tolerated in a popular government. Fisher Ames expressed a common Federalist conviction when he wrote in 1796: "It is a childish comfort that many enjoy, who say the minority aim at place only, not at the overthrow of government. They aim at setting mobs above law, not at the filling places which have known legal responsibility. The struggle against them is therefore *pro aris et focis;* it is for our rights and liberties." Such a state of mind can be understood only by a diligent reading of the newspapers and political tracts of the time. Republican journalists, many of whom were of alien origin, still gloried in the ideals and achievements of the French Revolution. But liberty and democracy, as preached by a Tom Paine and glorified by a Callender and exemplified by the Reign of Terror in France, had caused an ominous reaction in the minds of upholders of the established order in the United States.

Under these circumstances, when, in the minds of those in authority, party was identified with faction, and faction was held to be synonymous with treason, the position of the Republicans was precarious. War with France they bitterly opposed, but were powerless to prevent. The path of opposition was made all the more difficult by the well-known attitude of conspicuous Federalist leaders who favored war as an opportunity for discrediting their political opponents,

or, as Higginson expressed it, for closing the "avenues of French poison and intrigue."

Laboring under the conviction that they had to deal not only with an enemy without but with an insidious foe within, the Federalists carried through Congress in June and July, 1798, a series of measures which are usually cited as the Alien and Sedition Acts. The first in the series was the Naturalization Act, which lengthened the period of residence required of aliens who desired citizenship, from five to fourteen years. The Alien Act authorized the President, for a period of two years, to order out of the country all such aliens as he deemed dangerous to public safety or guilty of treasonable designs against the Government. Failure to leave the country after due warning was made punishable by imprisonment for a term not exceeding three years and by exclusion from citizenship for all time. A third act conferred upon the President the further discretionary power to remove alien enemies in time of war or of threatened war. Finally, the Sedition Act added to the crimes punishable by the federal courts unlawful conspiracy and the publication of "any false, scandalous, and malicious writings" against the Government, President, or Congress, with the intent to defame them or to bring them into contempt or disrepute. For conspiracy the penalty was a fine not exceeding five thousand dollars and imprisonment not exceeding five years; for seditious libel, a fine not exceeding two thousand dollars and imprisonment not exceeding two years.

The debates in Congress left little doubt that the

Sedition Act was a weapon forged for partisan purposes. The Federalists were convinced that France maintained a party in America which by means of corrupt hirelings and subsidized presses was paralyzing the efforts of the Administration to defend national rights. That there was great provocation for the act cannot be denied. The tone of the press generally was low; but between the scurrilous assaults of Cobbett in *Porcupine's Gazette* upon Republican leaders, and the atrocious libels of Bache upon President Washington, there is not much to choose.

What the opposition had to fear from the Sedition Act, appeared with startling suddenness in October, 1798, when Representative Matthew Lyon, of Vermont, an eccentric character who had become the butt of all Federalists, was indicted for publishing a letter in which he maintained that under President Adams "every consideration of the public welfare was swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." The unlucky Lyon was found guilty, sentenced to imprisonment for four months, and fined one thousand dollars.

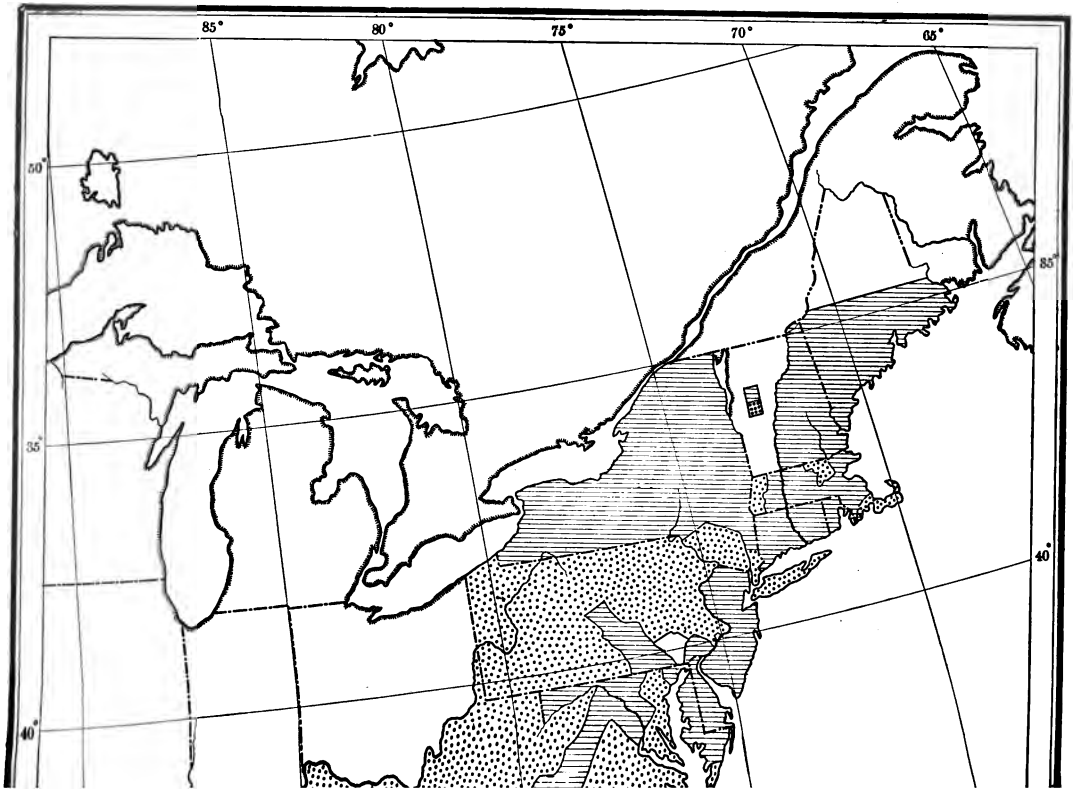
Alarmed by this attack on what he termed the freedom of speech and of the press, Jefferson cast about for some effective form of protest. Collaborating with John Breckenridge, a member of the Kentucky Legislature, he prepared a series of resolutions which were adopted by that body, while Madison, then a member of the Virginia House of Burgesses, secured the adoption of a set of resolutions of sim-

lar purport which he had drafted. Both sets of resolutions condemned the Alien and Sedition Acts as unwarranted by the letter of the Constitution and opposed to its spirit. Both reiterated the current theory of the Union as a compact to which the States were parties; and both intimated that, as in all other cases of compact among parties having no common judge, each party had an equal right to judge for itself, as well of infractions as of the mode of redress.

The real purport of these Virginia and Kentucky Resolutions has been much misunderstood. The emphasis should fall not upon the compact theory, for that was commonly accepted at this time; nor yet upon the vague remedies suggested by the phrases "nullification" and "interposition." With these remedies Jefferson and Madison were not greatly concerned. Protest rather than action was uppermost in their minds. As Jefferson said to Madison, they proposed to "leave the matter in such a train as that we may not be committed absolutely to extremities, and yet may be free to push as far as events will render prudent." What they desired was such an affirmation of principles as should rally their followers and arrest the usurpation of power by their opponents. The fundamental position assumed is that the Federal Goverment is one of limited powers and that citizens must look to their State Governments as bulwarks of their civil liberties, whenever the express terms of the federal compact are violated. The Federal Government was not to be allowed to become the judge of its own powers. By recalling the party to its original position of opposition to the

consolidating tendencies of the Federalists, the resolutions of 1798 served much the same purpose as a modern party platform. In this light, their ambiguities are not greater nor their political theories more vague than those of later platforms.

In the early months of 1799, petitions for the repeal of the Alien and Sedition Acts began to pour in upon Congress from the Middle States; but the Federalists felt secure enough in popular favor to ignore these protests. With a keener ear for the voice of the people, Jefferson summoned his Republican friends to seize the moment to effect an entire "revolution of the public mind to its republican soundness." "This summer is the season for systematic energies and sacrifices," he wrote to Madison. "The engine is the press. Every man must lay his purse and pen under contribution." The response was immediate and hearty. Not only were political pamphlets printed and distributed from Cape Cod to the Blue Ridge, but an astonishing number of newspapers were founded to disseminate Republican doctrine. The three or four years before the presidential election of 1800 are marked by an unprecedented journalistic revival. Instead of being mere purveyors of facts, these newspapers became, as a contemporary observes, "Vehicles of discussion, in which the principles of government, the interests of nations, the spirit and tendency of public measures, and the public and private characters of individuals, are all arraigned, tried, and decided." Such a systematic attempt to direct public opinion had not been made since the early days of the Revolution.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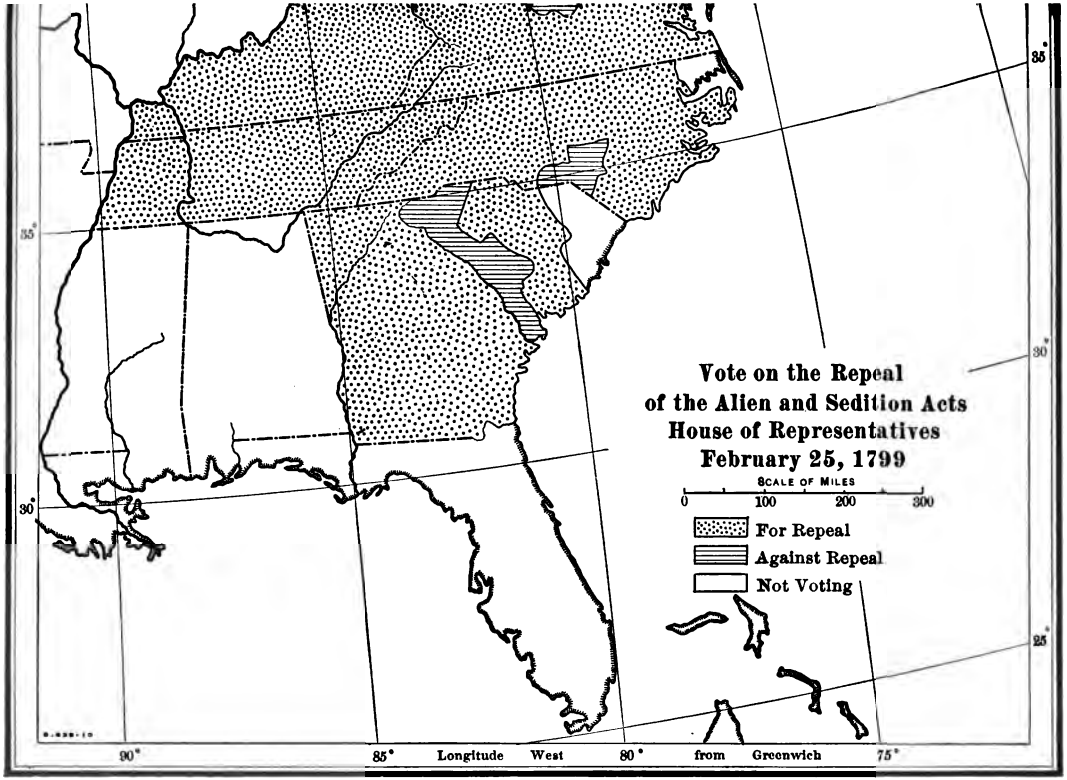

Vote on the Repeal
of the Alien and Sedition Acts
House of Representatives
February 25, 1799
SCALE OF MILES
0
100
200
300
For Repeal
Against Repeal
Not Voting
35°
30°
25°
90°
85°
80°
75°
Longitude West from Greenwich

The Federalists watched this Republican revival with grave misgivings. What Jefferson called "the awakening of the spirit of 1776" was to Fisher Ames an ominous sign of impending "revolutionary Robespierrism." Federalists of the Hamiltonian brand unhesitatingly held the Republicans responsible for the Fries Rebellion, which occurred in Pennsylvania. The immediate occasion for these disturbances, to be sure, was the federal house tax, but the rioting occurred in those eastern counties which were ardently Republican; hence the outbreak could be denounced plausibly enough as the result of Jacobin teachings. In some alarm the Administration dispatched troops to quell the riots, and prosecuted the leaders with relentless vigor. Fries was condemned to death, and the President's advisers would have carried out the decree of the court, "to inspire the malevolent and factious with terror"; but President Adams persisted in pardoning Fries, holding wisely that there was grave danger in so construing treason as to apply it to "every sudden, ignorant, inconsiderable heat, among a part of the people, wrought up by political disputes, and personal and party animosities." Such motives were not appreciated by the circle of Hamilton's admirers. Why were the renegade aliens who were running the incendiary presses not sent out of the country, Hamilton asked Pickering. "Are laws of this kind passed merely to excite odium and remain a dead letter?"

If the Administration made only a half-hearted effort to arrest and deport aliens, it could at least not be accused of letting the Sedition Act remain a

dead letter. Some unnecessary and thoroughly unwise prosecutions in the year 1799 were followed by a series of trials for seditious libel in the spring term of the federal courts. All the individuals indicted were either editors or printers of Republican newspapers. The impression created by these prosecutions was, therefore, that the Administration had determined to crush the opposition. What deepened this impression was the obvious bias of the federal judges and the partisanship of the juries, which it was alleged were packed by the prosecution.

With one accord Republican editors lifted up their voices in defense of freedom of speech, never losing from view, however, the political possibilities of the situation. The more prosecutions the better, wrote one editor significantly to a fellow victim: "You know the old ecclesiastical observation that the blood of the martyrs was the seed of the church." From the Federalist point of view these editors were "lying Jacobins," incendiaries, anarchists. "Should Jacobinism gain the ascendency," an orator at Deerfield, Massachusetts, warned his auditors, in the midst of the elections of 1800, "let every man arm himself, not only to defend his property, his wife, and children, but to secure his life from the dagger of his Jacobin neighbor." In vain Republicans protested that they had a right to form a party to oppose measures which they deemed destructive to public liberty. They were not opposing the Constitution but the Administration; not government in general, but the existing Government, of men who were employing despotic methods.

In the presidential election of 1800 only four of the sixteen States provided for a choice of the electors directly by the people. The outcome depended upon the action of the legislatures in a comparatively few States. New England was so steadfast in the Federalist faith that the Republicans gave up all hope of contesting the control of the legislatures. After an electioneering tour through Connecticut, Aaron Burr is said to have remarked that they might as well attempt to revolutionize the Kingdom of Heaven. On the other hand, Jeffersonian Republicanism was deeply rooted in Virginia, Kentucky, Tennessee, and Georgia. The contestable area lay in the Middle States and in the Carolinas.

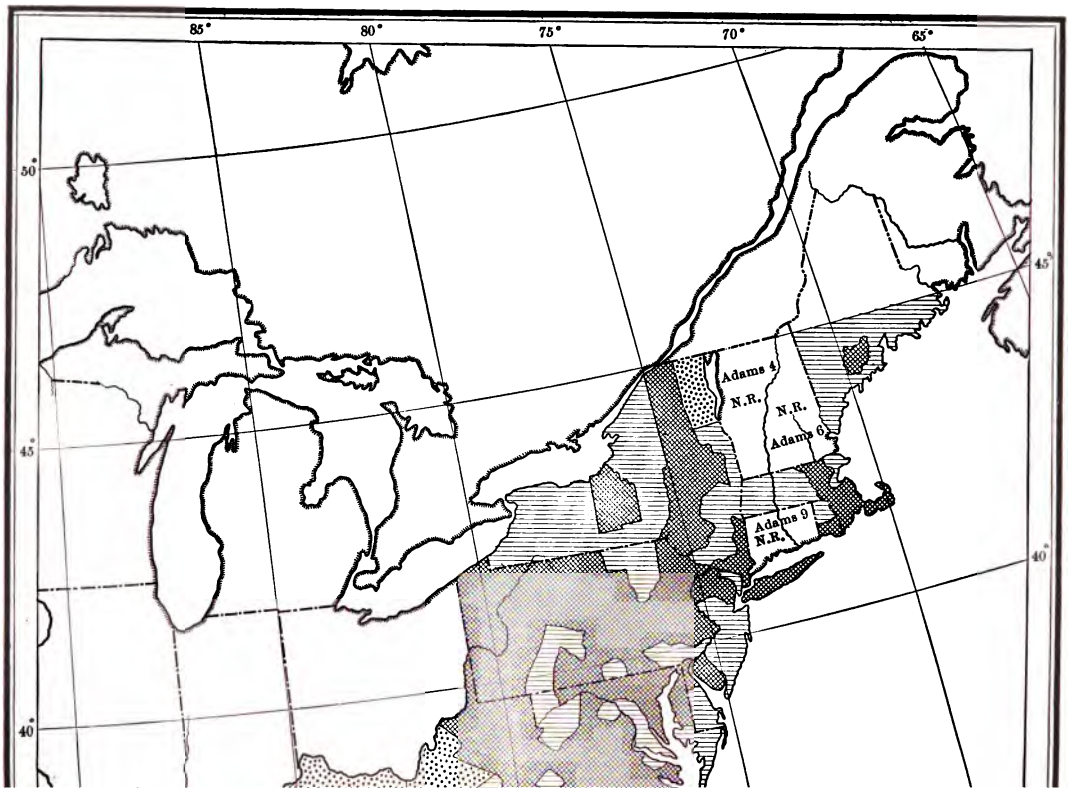
In the early spring, both parties began to burnish their armor for the first encounter in New York. It was generally believed that the May elections to the Assembly would determine the vote of the presidential electors, and that the vote of the city of New York would settle the control of the Assembly. The task of carrying the legislative districts of the city for the Republicans fell to Aaron Burr, past-master of the art of political management and first of the long line of political bosses of the great metropolis. How he concentrated the party vote upon a ticket which bore such names as those of George Clinton, Horatio Gates, and Henry Rutgers; how he wooed and won voters in the doubtful seventh ward among the laboring classes, — these are matters which elude the most painstaking researches of the historian. The outcome was a Republican Assembly which beyond

a peradventure would give the electoral vote of the State to the Republican candidates.

In another respect Burr's victory in New York was important. It made him the logical and most available candidate for the vice-presidential nomination. By general consent Jefferson became for the second time the candidate of his party for the Presidency. On May 11, the Republican members of Congress met in caucus and unanimously agreed to support Burr for the Vice-Presidency. Already wiseacres were figuring out the probabilities of a Republican victory.

It was a chastened group of Federalist Congressmen who met in caucus on May 3, after the disheartening tidings from New York. Though their hearts misgave them, they still supported John Adams. To carry South Carolina, they agreed to support Charles C. Pinckney for the Vice-Presidency; but rumor had it that many Federalists would be glad to see Pinckney outstrip Adams, — a hope which in the course of the summer was frankly avowed by Hamilton. In a letter which he had privately printed for circulation among the Federalists, Hamilton declared without disguise his hostility to Adams. The imprudence of this act was apparent when Burr seized upon a copy of the letter and scattered reprints far and wide as good campaign material.

The effect of Hamilton's indiscretion was probably slight. Adams carried all the electoral votes in the New England States, leading Pinckney by a single vote. The Federalists were completely successful also in New Jersey and Delaware. Through the tactics


85°
80°
75°
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Adams 4
N.R.
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Adams 6
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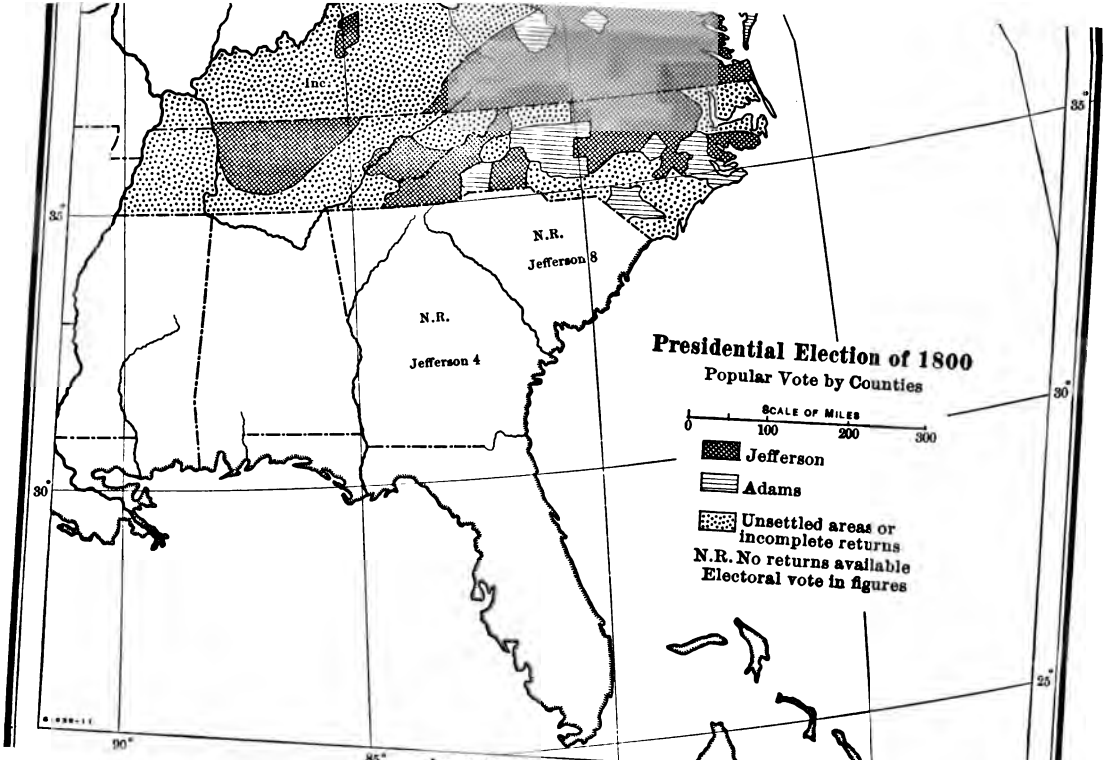
Inc.
N.R.
Jefferson 8
N.R.
Jefferson 4
Presidential Election of 1800
Popular Vote by Counties
Scale of Miles
0
100
200
300
Jefferson
Adams
Unsettled areas or incomplete returns
N.R. No returns available
Electoral vote in figures
35°
30°
25°
90°
85°

of thirteen Federalists in the Senate of Pennsylvania, they won seven of the fifteen electoral votes of that State. In Maryland they divided the electoral vote evenly with their opponents. In North Carolina, they secured four of the twelve votes; but in South Carolina they were completely discomfited. Instead of carrying his own State for the ticket, Pinckney was outgeneraled by the strategy of his cousin Charles Pinckney, who effected an irresistible combination of the Piedmont farmers and the artisans of Charleston. The loss of South Carolina was irretrievable and decisive. The Federalists had to concede the defeat of their ticket.

The exultation of the Republicans was at first unbounded. "The election of a Republican President," wrote the editor of the Schenectady *Cabinet* triumphantly, "is a new Declaration of Independence, as important in its consequences as that of '76, and of much more difficult achievement." But the elation of the Jeffersonians was somewhat tempered by the information that Jefferson and Burr had an equal number of votes in the electoral college. Adams was defeated, to be sure, but was Thomas Jefferson elected? Neither Jefferson nor Burr had "the highest number of votes" which the Constitution required for an election. The House of Representatives, therefore, must choose between them. But the House was Federalist! Coincidently with these tidings came rumors that the Federalists would prevent an election by the House until the 4th of March passed, when the Presidency and Vice-Presidency would fall vacant, necessitating a new election. Scarcely less ominous

was the report that the Federalists would endeavor to seat Burr in the presidential chair.

When balloting began in the House on February 11, 1801, enough Federalists had been involved in an intrigue to defeat Jefferson to give the vote of six States to Burr. Jefferson received the vote of eight States, but not the majority which was needed to elect, inasmuch as the delegations of two States were evenly divided. The result was the same on thirty-five successive ballots. On the thirty-sixth, February 17, Jefferson received the votes of ten States and Burr of four. The votes of Delaware and South Carolina were blank, the Federalists having agreed to produce a tie by not voting. A similar abstention from voting on the part of Federalists from Vermont and Maryland gave the votes of those States to Jefferson.

More than any other man, Bayard, of Delaware, was responsible for the election of Jefferson. Finding that Burr would not "commit himself," Bayard announced that he would cast the single vote of his State for Jefferson. "You cannot well imagine the clamor and vehement invective to which I was subjected for some days," he wrote to Hamilton. "We had several caucuses. All acknowledged that nothing but desperate measures remained, which several were disposed to adopt, and but few were willing openly to disapprove. We broke up each time in confusion and discord, and the manner of the last ballot was arranged but a few minutes before the ballot was taken." How narrowly the Federalists escaped the folly of electing Burr may be inferred from the

further statement of Bayard, that "the means existed of electing Burr, but this required his coöperation. By deceiving one man (a great blockhead), and tempting two (not incorruptible), he might have secured a majority of the States."

In after years Jefferson was wont to speak of his election as "the Revolution of 1800." To his mind, it was "as real a revolution in the principles of our government as that of 1776 was in its form; not effected, indeed, by the sword, as that, but by the rational and peaceable instrument of reform, the suffrage of the people." In one sense, at least, Jefferson was right. Taken collectively, the events of 1800 do constitute a revolution — the first party revolution in American history. For a season it seemed as though the Republican party was to be denied the right to exist as a legal opposition, entitled to attain power by persuasion. At the risk of incurring the suspicion of disloyalty, if not of treason, the Republicans clung tenaciously to their rights as a minority. By persistent use of the press, by unremitting personal efforts, and by adroit electioneering, the leaders succeeded in arousing the apathetic masses and converted their minority into an actual majority. They won, therefore, for all time that recognition of the right of legal opposition which is the primary condition of successful popular government.

The change in political weather was foreshadowed during the summer of 1800 by the removal of the seat of government to the banks of the Potomac. For ten years Philadelphia had been the center of

the political and the social worlds, which for the only time in American history were then identical. Even those who knew the court life of Europe marveled at the display of wealth and fashion at this republican court. Of this social world, the "President and his Lady" were not merely the titular and official leaders, but the real leaders. Between the Virginia aristocracy and the wealthy families of Philadelphia there were natural affinities. And if the second Federalist President and his consort did not become leaders in quite the same sense, it was because John and Abigail Adams belonged temperamentally to a more restrained society.

Those who had enjoyed the hospitalities of the Morrises, the Binghams, and the Willings, and the bodily comforts of Philadelphia hotels and inns, were not likely to find any compensations in the unkempt, straggling village which the Government and private speculators were trying to convert into a fitting abode for the National Government. There were few comfortable private dwellings. Most of the houses were mere huts occupied by laborers. Great tracts were left unfenced and uncultivated, in the firm expectation that an extraordinary rise in land value was about to take place. That craze for speculation in land which had possessed those with any idle capital afflicted every landowner in or near the new city.

When Mrs. Adams finally reached the city, after a difficult journey through the forest between Baltimore and Washington, she met with anything but a cheering welcome. The President's house was not

yet finished: the plaster was not even dry on the walls. It was built on a grand and superb scale, but the thrifty New England spirit of the President's wife was appalled at the prospect of having to employ thirty servants to keep the apartments in order and to tend the fires which had everywhere to be kept up to drive away the ague. The ordinary conveniences were wanting. For lack of a yard, Mrs. Adams made a drying-room out of the great unfinished audience room. And the only society which she might enjoy was in Georgetown, two miles away. "We have, indeed," she wrote, "come into *a new country*." But with true pioneer spirit, she added, "It is a beautiful spot, capable of every improvement, and, the more I view it, the more I am delighted with it."

The gloom which enveloped the Federalists after the elections of the year deepened as they straggled into the new capital in November. They approached their labors as men who would save what they could of a falling world. For some time there had been an urgent demand for the reorganization of the federal judiciary. The justices of the Supreme Court objected to circuit duty and urged the erection of a circuit court with a permanent bench of judges. Such a reform was inevitable, it was said; therefore let the Federalists find what consolation they might from the possession of these new judgeships. Patriotism, too, suggested the wisdom of filling the judiciary with men who would uphold the established order. "In the future administration of our country," President Adams wrote to Jay, "the firmest security we

can have against the effects of visionary schemes or fluctuating theories will be in a solid judiciary."

The Judiciary Act of February 13, 1801, which embodied these aims, added five new districts to those which had been established in 1789, and grouped the twenty-two districts into six circuits. The amount of patronage which thus fell into the President's hands was very considerable, though it was grossly exaggerated by Republicans. The partisan press pictured President John Adams signing the commissions of these new judgeships to the very stroke of twelve on the night of March 3, and then entering his coach and driving in haste from the city.

BIBLIOGRAPHICAL NOTE

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CHAPTER VII

JEFFERSONIAN REFORMS

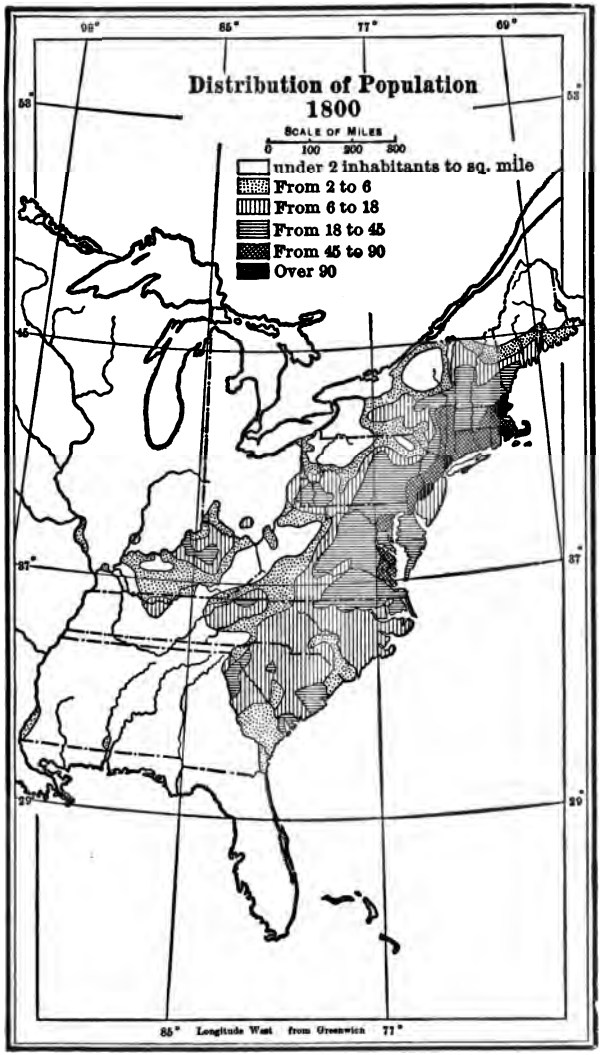
THE society over whose political destiny Thomas Jefferson was to preside for eight years was for the most part still rural and primitive. Evidences of a higher culture were wanting outside of communities like Philadelphia, Boston, and Charleston. Even in Philadelphia, the literary as well as the social and political capital, the poet Moore could find only a sacred few whom "'t was bliss to live with, and 't was pain to leave." American life had not yet created an atmosphere in which poetry, or even science, could thrive. The scientific curiosity of the younger generation does not seem to have been whetted in the least by the startling experiments of Franklin; and the figure of Philip Freneau stands almost alone, though Connecticut, to be sure, boasted of her Dwight, her Trumbull, and her Barlow. The "Connecticut wits" are interesting personalities; but the society which could read, with anything akin to pleasure, Dwight's *Conquest of Canaan* — an epic in eleven books with nearly ten thousand lines — was more admirable for its physical endurance than for its poetical intuitions. Latrobe was quite right when he wrote that in America the labor of the hand took precedence over that of the mind.

The American people were still engaged almost exclusively in agriculture and commerce. Manufac-

turing was in its infancy. In his report on manufactures in 1791, Hamilton had named seventeen industries which had made notable progress, but most of these were household crafts. In 1790, Samuel Slater had duplicated the inventions of Hargreaves and Arkwright, and had, with Moses Brown, of Rhode Island, set up a successful cotton mill at Pawtucket; but ten years later only four factories were in operation in the whole country.

The wars in Europe had created an unprecedented and ever-increasing demand for American agricultural products. The price of foodstuffs like flour and meal reached a point which made possible enormous profits. Shipping became, therefore, the indispensable handmaid of agriculture, as Jefferson observed. The volume of trade expanded at an astonishing rate. The total value of exports mounted from $20,000,000 in 1790 to $94,000,000 in the year of Jefferson's inauguration. One half of this amount, however, represented the value of commodities like sugar, coffee, and cocoa, which had been brought into the country for exportation. The easy and almost certain profits of this trade attracted capital which might otherwise have gone into manufacturing.

Shipping was stimulated also by the Navigation Act of 1789, which imposed lower tonnage duties in American ports on vessels built or owned by American citizens, and by the Tariff Act of the same year, which allowed a ten per cent deduction from the customs duties levied on goods imported in American vessels. These discriminating duties, together with the law of 1792, which excluded foreign-built ships


Distribution of Population
1800
Scale of Miles
0 100 200 300
under 2 inhabitants to sq. mile
From 2 to 6
From 6 to 18
From 18 to 45
From 45 to 90
Over 90
98°
85°
77°
69°
53°
45°
37°
29°
85° Longitude West from Greenwich 77°

from American registry, would have aided materially in the building of an American marine, even in less prosperous times. The registered tonnage engaged in foreign trade increased from 346,254 in 1790 to 718,549 in 1801; and in coast trade, from 103,775 to 246,255. Yet there was an artificial quality in this prosperity. "Temporary benefits were mistaken for permanent advantages," writes a contemporary; "so certain were the profits on the foreign voyages, that commerce was only pursued as an art; . . . the philosophy of commerce, if I am allowed the expression, was totally neglected . . . they [merchants] did not contemplate a period of general peace, when each nation will carry its own productions, when discriminations will be made in favour of domestic tonnage, when foreign commerce will be limited to enumerated articles, and when much circumspection will be necessary in all our commercial transactions."

It cannot be said, either, that the American farmer studied the philosophy of agriculture. He owed his crops less to intelligent cultivation of the soil than to provident Nature in a new and untilled country. Both his methods and his implements were bad, and resulted in that land spoliation which has been the bane of American industry. "Agriculture in the South," said John Taylor, of Caroline, "does not consist so much in cultivating land as in killing it"; and the statement was scarcely less true when applied to the Northern farmer. The soil was rapidly exhausted by planting the same crop year after year, for it was easier to take up fresh land than to restore productivity to the old. Indeed, the comments

of foreign travelers at the close of the century suggest doubts as to whether the American farmer understood the importance of rotating his crops and of fertilizing his fields. The farming implements in use showed little of that mechanical ingenuity which is now characteristic of the American people. The plough was still a clumsy affair with heavy beam and handles, and wooden mould-board. The scythe, the sickle, and the flail were the same as their forbears had used for centuries.

The demand of Europe for the food products of the Northern and Middle States obscured for a time the importance of cotton as an article of export. In 1790, South Carolina and Georgia, then the only cotton-growing States, produced less than two million pounds of inferior quality, none of which was exported. A decade later thirty-five million pounds were raised, one half of which was exported; and Virginia, North Carolina, and Tennessee had begun the cultivation. This sudden development was due to the invention of the cotton gin by Eli Whitney, in 1793. This machine facilitated the separation of the seed from the fiber of the short-staple variety of cotton, which alone could be profitably cultivated in the uplands, and thus made possible a vast extension of the area of cotton culture.

The cotton gin came at an opportune moment for the Southern planters, since rice and indigo were declining in importance as exports, and their gangs of African slaves were likely to become a burden. They could now cultivate cotton under an extensive system of agriculture with large immediate profits.

Experience proved, however, that the system was extraordinarily wasteful, leading to a rapid exhaustion of the soil. This ever-recurring exhaustion of the soil and demand for new land was a potent cause of the incessant pressure of population into the virgin lands of the Southwest, in succeeding decades.

The new President was the embodiment of the national life. Although he was tall of stature, he was not outwardly an impressive figure. His red, freckled face wore a frank, good-natured expression, but he lacked dignity and poise. "His whole figure has a loose, shackling air," wrote a contemporary. "A laxity of manner seemed shed about him . . . even his discourse partook of his personal demeanor. It was loose and rambling." With his blue coat and red waistcoat, his green velveteen breeches, yarn stockings, and slippers down at the heels, he seemed to an English visitor, who saw him in 1804, "very much like a tall, large-boned farmer." Jefferson would have been the last to resent this epithet. No man had a more profound respect for tillers of the soil. Years before he had written: "Generally speaking, the proportion which the aggregate of the other classes of citizens bears in any State to that of its husbandmen is the proportion of its sound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption." He rejoiced in the agricultural possibilities of America. Could he have had his way, he would have made the republic, in the apt phrase of Mr. Henry Adams, "an enlarged Virginia — a society to be kept pure and free by the absence of complicated interests, by

the encouragement of agriculture and of commerce as its handmaid." He abhorred cities and factories, and dreaded the growth of a manufacturing and capitalist class.

An agricultural society bent upon justice, Jefferson believed, could always protect itself against the aggressions of foreign nations. "Our commerce," he wrote soon after his inauguration, "is so valuable to them, that they will be glad to purchase it, when the only price we ask is to do us justice. I believe we have in our own hands the means of peaceable coercion." In this wise the United States would set an example to the world of a society democratically organized and capable of unlimited moral and physical progress.

As the head of a party which had effected a revolution in government, Jefferson's first care was to reconcile his opponents to Republican rule. The inaugural address emphasized the principles upon which all republican governments must be based. It is often said that these principles might have been uttered by Washington with equal propriety — as good Federalist doctrine. This is to mistake the significance of the revolution which had occurred. A party had triumphed which Federalists firmly believed inimical to all government. The announcement that the fundamental principles to which all Americans were attached would guide the new Administration had a meaning which it would not have had if uttered by a Federalist President. So far did Jefferson lean in holding out the olive branch that he ran the risk of minimizing the revolution of 1800.

To say that "every difference of opinion is not a difference of principle. We are all Republicans, we are all Federalists," was to contradict his often expressed conviction that his party had saved the country from monarchy.

Aside from such generalities as that wise government consists in restraining men from injuring one another and leaving them free to regulate their own pursuits, the inaugural address contains no declaration of purpose or policies. No such reticence marks Jefferson's private letters, which are, indeed, the best expression of his political philosophy. Nowhere is the governing purpose of his Administration stated more clearly than in a letter written just before his inauguration. "Let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage the better the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very unexpensive one, — a few plain duties to be performed by a few servants."

The first and most troublesome task of the Administration was to select these few servants. Even in naming the heads of departments, the President experienced some embarrassment, for, while Madison accepted readily the Secretaryship of State and Albert Gallatin that of the Treasury, the naval portfolio went begging. Robert Smith, of Maryland, was finally persuaded to accept the post. Two New Englanders, Henry Dearborn and Levi Lincoln, became

Secretary of War and Attorney-General respectively. Far more difficult was the distribution of the lesser federal offices. Had Jefferson been free to follow his own inclination, he would probably have made few removals, even though such a course would have seemed somewhat inconsistent with his belief that Federalists were monarchists at heart. He yielded slowly and reluctantly to the demands of his partisans for their share of the offices; but he professed to look forward with joy to that state of things when the only questions concerning a candidate shall be, Is he honest? Is he capable? Is he faithful to the Constitution?

The embarrassment of the President was all the greater because removals from office were likely to defeat his policy of conciliating the Federalists; and because the bestowal of offices was likely to alienate some local faction, as in New York, where the Clintons and the Livingstons were fighting the faction led by Burr. Once started on the policy of removal, the descent was easy. The point of equilibrium between the parties was soon passed. By the end of Jefferson's second term of office, the civil service was as preponderatingly Republican as it had been Federalist in 1800. It cannot be denied that Jefferson opened the door to the spoils system; but it should be stated also that he endeavored to make fitness a qualification for office. The charge that offices were given indiscriminately to "wild Irishmen" and French refugees, is not sustained by the facts. On the whole Jefferson's appointments were not inferior in character to those of his predecessors. The

vicious aspects of the spoils system did not appear for a generation.

As an opposition party the Republicans had always declaimed vociferously against the powers wielded by the President. Jefferson sincerely wished to avoid what he termed the monarchical tendencies of his predecessors; and as an earnest of his intentions he abandoned not only levees but also the practice of addressing Congress in a speech, since Republicans held this custom a reprehensible imitation of the British speech from the throne. Yet with characteristic indirection, Jefferson assigned other reasons for substituting a written message for the usual personal address. "I have had principal regard," said he, "to the convenience of the Legislature, to the economy of their time, to their relief from the embarrassment of immediate answers, on subjects not yet fully before them, and to the benefits thence resulting to public affairs." It is highly probable that Jefferson had his own convenience also in mind, for he was not a ready nor an impressive speaker.

The keynote of the reforms which the President suggested tactfully to Congress was economy. It was to effect a reduction of the debt, indeed, that Jefferson had called Gallatin to the head of the Treasury. Eight years later he wrote: "The discharge of the debt is vital to the destinies of our government; we shall never see another President and Secretary of the Treasury making all other objects subordinate to this." By laborious calculation Gallatin reached the conclusion that if $7,300,000

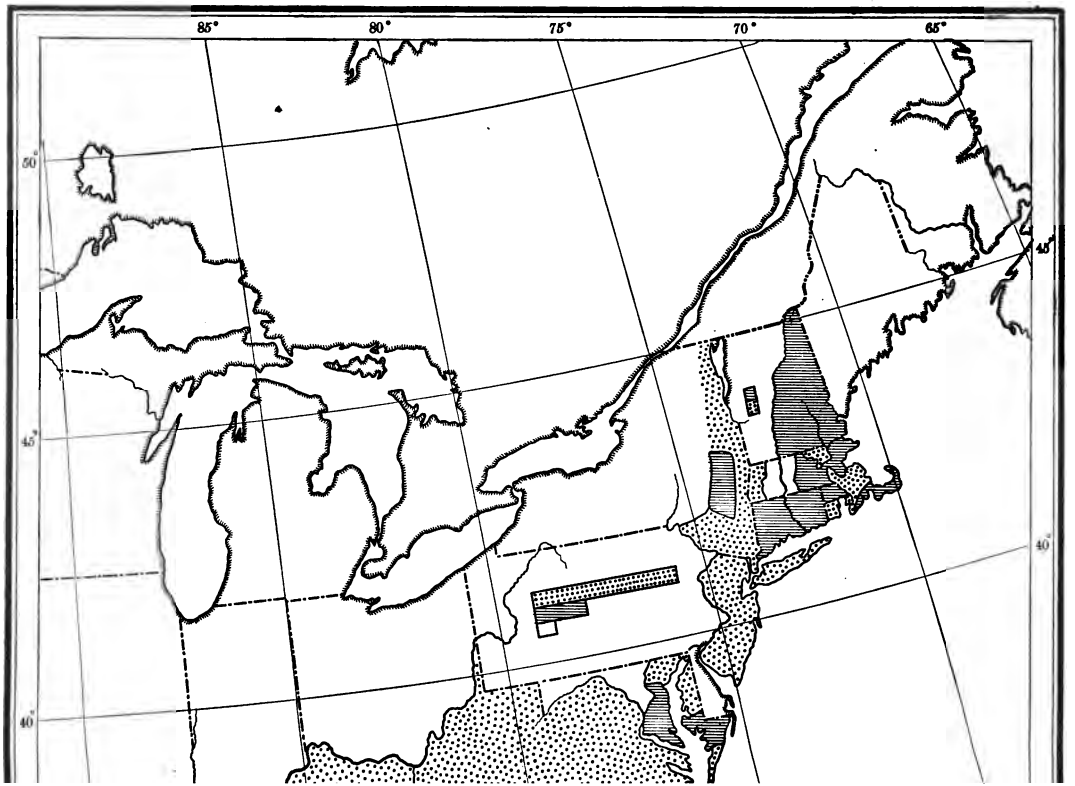
were set aside each year, the debt, principal and interest, could be discharged within sixteen years. But the party was clamoring for the reduction of taxes. The problem before the Secretary of the Treasury was how to accomplish these antithetical purposes. The most unpopular tax was unquestionably the excise. If this were cut out and the estimated appropriation for the reduction of the debt were made, the Government would be unable to live within its income. The only alternative was to reduce expenditures. It was at this point that Jefferson's "chaste reformation" of the government was to begin. Under the Federalist régime, in anticipation of war with France, the expenditures for the army and navy had mounted to six millions of dollars, nearly double the normal expenditure of those departments. All good Republicans would welcome a proposal to reverse the militant policy of the Federalists, which, indeed, the return of peace seemed to make unnecessary. It was agreed that the expenditures for the army and navy should be kept below two million dollars.

Notwithstanding Jefferson's wish to avoid everything savoring of executive dictation, he could not abdicate his position as leader of his party. Throughout his first term, at least, he was the master mind directing the policies of the party, in ways which were not less effective because they were personal and indirect. The leadership in the House of Representatives, which then overshadowed the Senate, fell to Southern rather than to Northern Republicans. In close touch with the Speaker, Nathaniel Macon, of

North Carolina, and with the chairman of the Committee of Ways and Means, the eccentric John Randolph, of Roanoke, the Administration scored comparatively easy victories over the Federalists on matters of financial policy.

The repeal of the Judiciary Act of 1801 was the second task which the President laid upon the shoulders of Congress. No act of the outgoing Administration had given greater offense. Jefferson expressed a general impression when he declared that the Federalists, driven from the legislative and executive branches of the Government, had retreated into the judiciary as their stronghold. "There the remains of federalism are to be preserved and fed from the Treasury; and from that battery all the works of republicanism are to be beaten down and destroyed." But no suggestion of this animus toward the Federalist judges appeared in the studied moderation of the President's message. The President contented himself with presenting a record of the causes decided by the courts, in order that Congress might "judge of the proportion which the institution bears to the business it has to perform."

Taking their cue from the President, the Republican leaders in Congress urged the repeal of the Judiciary Act on the ground that the new courts had not justified their existence. Republican economy required that unnecessary, and therefore improper, institutions should be abolished. Certain bolder spirits like William Giles, of Virginia, however, frankly admitted a fear of the "ultimate censorial and controlling power" of the courts over all the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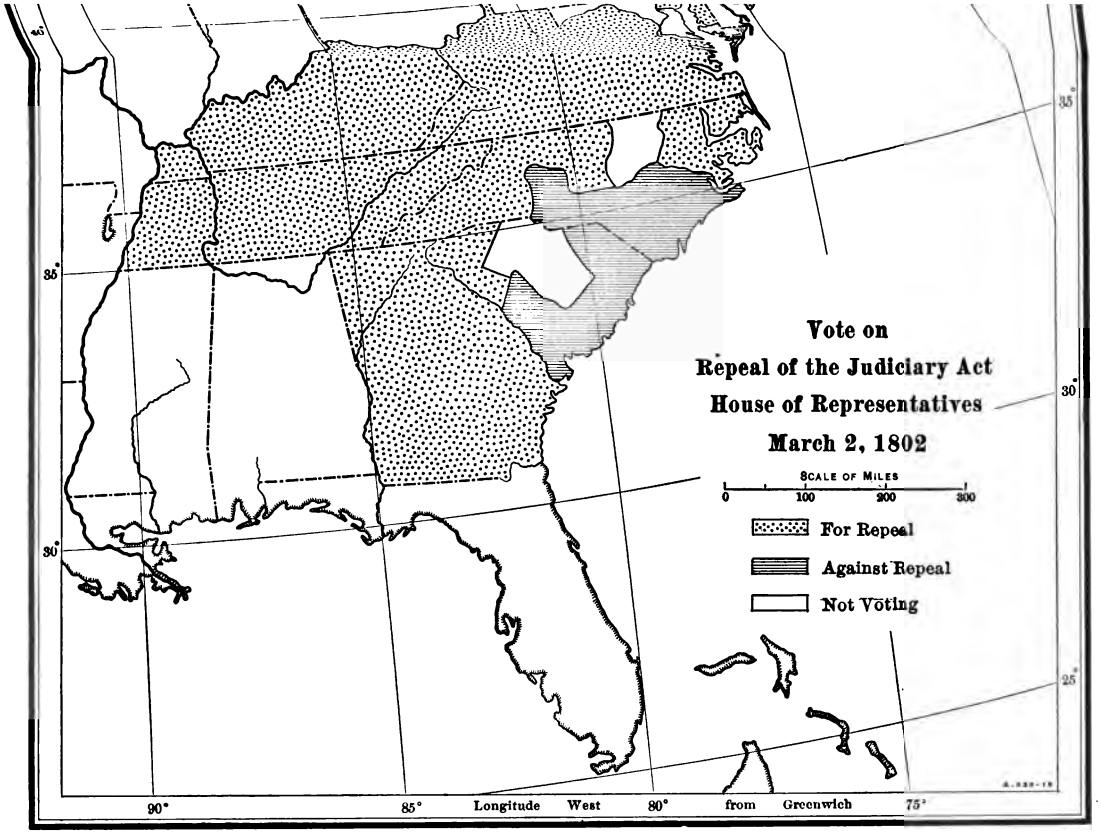
Vote on
Repeal of the Judiciary Act
House of Representatives
March 2, 1802
Scale of Miles
0
100
200
300
For Repeal
Against Repeal
Not Voting
40°
35°
30°
25°
90°
85°
Longitude West
80°
from Greenwich
75°

departments of the Government — a control "over legislation, execution, and decision, and irresponsible to the people." In the background of the active mind of this Virginian was hostility to the new courts "because of their tendency to produce a gradual demolition of State Courts." If this last were the real reason for the repeal of the act, consistency should have led the Republicans to revise the whole judiciary system from the Supreme Court down. But for such radical action few, if any, were prepared. The repealing act passed the House by a party vote of fifty-nine to thirty-two, and was signed by the President on March 8, 1802.

In the course of the acrimonious debate over the judiciary, Federalists had challenged the constitutional right and power of Congress to vacate the judgeships, asserting that the plain intent of the Constitution is to place the judges beyond the power of Congress by prescribing a tenure of office during good behavior. The challenge was disquieting, for with John Marshall on the bench of the Supreme Court, the Republican reformation of the courts might be brought to naught by an adverse decision. A supplementary act was therefore passed which prevented the Supreme Court from holding its usual session. It was hoped that when the court met in the following year, Federalist partisanship would have lost its violence.

Two obnoxious acts of the late Administration — the Alien and the Sedition Acts — had expired by limitation. Congress suffered the Alien Enemies Act to remain upon the statute book, but insisted upon

the repeal of the Naturalization Act of the year 1798. The time of residence required of aliens before they could acquire citizenship was again fixed at five years. With these rather meager performances, the reforms of the Republicans came to an end.

Perhaps none of the last appointments of John Adams had so exasperated his successor as that of John Marshall as Chief Justice of the Supreme Court. Jefferson had an invincible repugnance for Marshall; and the feeling was cordially reciprocated. Between these men there were temperamental differences as wide as the ocean. Moreover, Jefferson entertained the belief that all appointments made by Adams after the results of the election were known were nullities, on the theory that a retiring President might not bind his successor. Two years later, in 1803, in the famous case of *Marbury* v. *Madison*, the Supreme Court, speaking through the Chief Justice, took sharp issue with the President. William Marbury had applied to the court for a *mandamus* to compel Madison, Secretary of State, to deliver his commission as justice of the peace, which, it was alleged, had been duly signed and sealed, but never delivered. The Supreme Court held that Marbury was entitled to his commission. "To withhold his commission, therefore," said Marshall, "is an act deemed by the Court not warranted by law, but violative of a legal vested right." Let President Thomas Jefferson take notice of his constitutional obligations.

The case of *Marbury* v. *Madison*, however, has a much deeper significance for constitutional history.

Having asserted the right of Marbury to his commission, the court disappointed expectations by refusing to issue the writ of *mandamus*, on the ground that the power to issue such writs was not conferred by the Constitution upon the Supreme Court as part of its original jurisdiction. And as the Judiciary Act of 1789 had conferred this authority, the court was impelled to declare this provision of the act unwarranted by the Constitution and therefore void. For the first time the Supreme Court asserted its power to pronounce an act of Congress repugnant to the Constitution not to be law, but void and of no effect. In substantiating its position, the court did not inquire into the difficult question whether the framers of the Constitution intended or expected the national judiciary to exercise this authority. It was enough for the purposes of the court that the Constitution was the supreme and paramount law of the land, established by the people of the United States. The Constitution defines and limits the powers of government: it must then control any legislative act repugnant to it. "Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void."

With equal certitude the court declared that it was the province and duty of the judiciary to say what the law is. "Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other,

the courts must decide on the operation of each." So if a law stood in opposition to the Constitution, the court must decide which of these conflicting rules governs the case. "This is of the very essence of judicial duty." Moreover, the judges may not shut their eyes to the Constitution and see only the law, for they are bound by oath to administer justice not according to the laws alone, but "agreeably to the Constitution and the laws of the United States." "Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void; and that courts, as well as other departments, are bound by that instrument."

On two other occasions the hostility of the Republican Administration provoked a trial of strength with the Federalist judiciary. The impeachment in 1804 of John Pickering, District Judge in New Hampshire, on charges of intoxication and habits unfitting him for his duties, amounted to little short of a tragedy. When the trial opened, Judge Pickering did not appear, but representations made by his son showed beyond a doubt that he was and had been for two years of unsound mind. To convict a man of misdemeanors for which he was not morally responsible seemed a travesty on justice. Yet there was no other constitutional device for removing him. Though Pickering never appeared in person, the managers for the House pressed the prosecution; and rather than leave the administration of justice to a demented judge, the Senate pronounced the unhappy

man "guilty as charged," and resolved that he should be removed from office.

On the same day that the Senate reached this monstrous decision, March 12, 1804, the House voted to impeach Justice Samuel Chase, of the Supreme Court. While the defiant words of Chief Justice Marshall in the Marbury case were still rankling in Jefferson's bosom, Justice Chase had gone out of his way to attack the Administration, in addressing a grand jury at Baltimore. The repeal of the Judiciary Act, he had declared, had shaken the independence of the national judiciary to its foundations. "Our republican Constitution," said he, "will sink into a mobocracy — the worst of all possible governments." To appreciate the effect of this partisan outburst upon the President, one must recall that Chase was the judge who had presided at the trials of Fries and of Callender, and who had left the bench to electioneer for John Adams in the campaign of 1800. Jefferson immediately wrote to Nicholson, who was managing Pickering's impeachment, raising the question whether "this seditious and official attack on the principles of our Constitution" ought to go unpunished.

Such was Jefferson's way of initiating the measures of the Administration. His supporters in the House were not over-eager to take up the gauntlet, but as usual the wishes of the President prevailed. The management of the impeachment of Chase fell to John Randolph, who was as ill-fitted by temperament for the difficult task as a man could be. Instead of impeaching Chase for his indiscretion at

Baltimore, Randolph dragged into the indictment his conduct on the bench during the trials of Fries and of Callender, and certain errors in law which he was alleged to have committed. The effect of these latter items was to range all the bench on the side of Chase, for if a mere mistake in judgment was a proper ground of impeachment, no judge was safe in his tenure. Justice Chase secured some of the best legal talent in the country to conduct his defense; and the trial assumed from the outset a spectacular character from the personalities involved.

The managers of the impeachment were far from consistent in their conception of the nature of impeachable offenses. Randolph, Campbell, and Giles held that an impeachment was "a kind of inquest into the conduct of an officer merely as it regards his office," rather than a criminal prosecution. A judge, in short, might be removed for a mistake in the administration of the law. Nicholson rejected this theory, contending that impeachment was essentially a criminal prosecution which aimed at not only the removal but also the punishment of the offender. Yet the managers had not specified any offense which could be called a "high crime" or "misdemeanor" within the meaning of the Constitution. The counsel for Justice Chase, on the other hand, held consistently to the position that a judge might not be impeached or removed from office for anything short of an indictable offense, an offense indictable under the known law of the land.

From the first, the legal counsel for the accused

were more than a match for the managers. Randolph's erratic course culminated in an impassioned but incoherent speech which closed the argument for the prosecution and left the outcome hardly in doubt. Not one of the articles of impeachment received the two-thirds majority which was necessary to convict. The eighth article, which touched upon the real provocation for the trial, — the harangue at Baltimore, — received the highest vote; but nearly one fourth of the Republican Senators refused to sustain the managers. The acquittal of Chase was, therefore, a judgment against Randolph. He never recovered his lost prestige as the leader of his party in the House. Jefferson could accept Randolph's downfall with equanimity, but not the failure of the impeachment. Years afterward he wrote bitterly that impeachment was "an impracticable thing, a mere scarecrow." From this time on, said he, the judges held office without any sense of responsibility, led "by a crafty chief-judge who sophisticates the law to his mind by the turn of his own reasoning."

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CHAPTER VIII

THE PURCHASE OF THE PROVINCE OF LOUISIANA

NOT a war cloud was in the sky when Jefferson took the oath of office. The European calm, to be sure, proved to be only a lull in the tempest of war which was to rage fifteen years longer; but no man could have cast the horoscope of Europe in that age of storm and stress. The times seemed auspicious for the Republican program of retrenchment and economy. Jefferson was so sanguine of continued peace that he would have been glad to lay up all seven of the frigates which then constituted the navy in the eastern branch of the Potomac, where "they would be under the immediate eye of the department, and would require but one set of plunderers to take care of them." Peace was his passion, he frankly avowed. He would have been glad to banish all the paraphernalia of war. Yet within three months the United States was at war with an insignificant Mediterranean power and menaced by France from an unexpected quarter.

Early in the spring of 1801, the Pasha of Tripoli, one of the Barbary powers which for years had preyed upon the commerce of the Mediterranean, declared war upon the United States by cutting down the flagstaff at the residence of the American consul. European states had purchased immunity for their com-

merce by paying tribute to these rapacious pirates; and the United States had followed the custom. The Pasha of Tripoli, however, was dissatisfied with the American tribute, a paltry eighty-three thousand dollars, and demanded more. The other Barbary powers threatened to make common cause with him. Anticipating trouble, Jefferson had sent a small squadron to the Mediterranean even before the dramatic act of the Pasha at the American consulate; and hostilities began on August 1 with the capture of a corsair by the schooner Enterprise. Therewith Jefferson's dreams of a navy for coast defense only vanished in thin air.

Contrary to all expectations, the Tripolitan War dragged on for four years, causing the peace-loving Administration no end of embarrassment. So far from reducing expenditures, Gallatin was obliged to devise new ways and means for an ever-increasing naval force. An additional duty of two and one half per cent was laid on all imports which paid an *ad valorem* duty, and the proceeds were kept as a separate treasury account. The Administration was sensitive to the charge that it was guilty of the very crime which it had accused the Federalists of committing — "taxing the industry of our fellow citizens to accumulate treasure for war." With superior wisdom and a higher sense of popular responsibility, the Republicans, so the argument ran, were establishing a "Mediterranean Fund," so that the people might know in detail just what was collected and spent for war purposes.

Tales of individual daring go far to relieve the

tedious record of ineffective blockades and bombardments during the war. Two exploits left an imperishable memory in the minds of contemporaries — Lieutenant Stephen Decatur's destruction of the captured frigate Philadelphia, under the guns of the forts in the harbor of Tripoli; and the tragic death of Lieutenant Richard Somers and the crew of the Intrepid, as they were about to blow up the Tripolitan gunboats in the harbor. These deeds of heroic adventure created the very last thing that Jefferson desired, something closely akin to an *esprit de corps* in the new navy.

It was not so much the onslaughts of Commodore Preble's gunboats, however, as an unexpected attack on his eastern frontier which brought the Pasha to terms. His exiled brother, Hamet Caramelli, had fallen in with an American adventurer by the name of Eaton, who persuaded him to join an expedition against their common enemy. With a motley army they marched across the desert from Egypt and fell upon the outlying domains of the Pasha. That astute monarch then yielded to persuasion. On June 3, 1805, with many protestations that he was being subjected to humiliating terms, he agreed to live on terms of peace with the United States and renounce all claim to tribute; but his injured feelings were salved by a ransom of sixty thousand dollars for the crew of the Philadelphia. The Pasha's brother was rewarded with a pension of two hundred dollars a year.

At the same moment that hostilities broke out in the Mediterranean, Jefferson heard disquieting news from France. "There is considerable reason to appre-

hend," he wrote to Monroe, on May 26, 1801, "that Spain cedes Louisiana and the Floridas to France. It is a policy very unwise in both, and very ominous to us." What Jefferson apprehended was, indeed, an accomplished fact. On October 1, 1800, the day after Joseph Napoleon, in the name of his brother, set his hand to the Treaty of Morfontaine, which restored amicable relations between France and the United States, General Berthier under instructions from Napoleon signed at Ildefonso a treaty which restored Louisiana to France. In effect, as Mr. Henry Adams says, the second treaty undid the work of the first.

The retrocession of Louisiana, long desired and sought by the Directory, was regarded by Talleyrand as a diplomatic triumph of first magnitude. The price, easily paid by one who held Italy under his iron heel, was a kingdom in Tuscany for the young Duke of Parma, nephew and son-in-law of Charles IV of Spain. The gateway to this vast province was New Orleans, and the avenue of approach lay by way of Santo Domingo, once an important French colony, but now under the rule of Toussaint L'Ouverture. Before Talleyrand's dream of a revived colonial empire in the heart of the North American continent could be realized, this "gilded African" must be removed and Santo Domingo restored to its former position as the center of the French West Indies. The conquest of a negro republic surely could not be a difficult undertaking for one who had humbled Austria on the battlefields of northern Italy. In November, 1801, Napoleon dispatched Leclerc with

an army of ten thousand men to recover Santo Domingo.

Jefferson was thoroughly alarmed at the news of Leclerc's expedition. "Every eye in the United States," he wrote, "is now fixed on this affair of Louisiana. Perhaps nothing since the Revolutionary War has produced more uneasy sensations through the body of the nation." No discerning man could mistake the significance of the expedition; the French troops would proceed to Louisiana after finishing their work in Santo Domingo. The retrocession of Louisiana, in short, as Jefferson said, completely reversed all the political relations of the United States. Hitherto, from the Republican point of view, France had been our natural friend. Henceforth, as the possessor of New Orleans, through which three eighths of the produce of the West passed to market, she became a natural and habitual enemy. "France placing herself in that door," wrote Jefferson to Livingston, "assumes to us the attitude of defiance. The impetuosity of her temper, the energy and restlessness of her character, placed in a point of eternal friction with us, and our character, . . . these circumstances render it impossible that France and the United States can continue long friends when they meet in so irritable a position. . . . The day that France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low-water mark. It seals the union of two nations who in conjunction can maintain exclusive possession of the ocean. From that moment we must marry ourselves to the British fleet and nation."

Even as he expressed his apprehensions to Livingston, then Minister to France, Jefferson suggested ways and means for averting the clash of conflicting interests. If France was bent on possessing and holding Louisiana, might she not make concessions for the sake of retaining the friendship of the United States? Livingston was to sound the French Government to ascertain whether it would entertain the idea of ceding the Island of New Orleans and the Floridas. "We should consider New Orleans and the Floridas as equivalent for the risk of a quarrel with France produced by her vicinage," he assured Livingston.

What the Western world had to fear from the French occupation of Louisiana appeared in November, 1802, when Governor Claiborne, of the Mississippi Territory, reported that the right of deposit at New Orleans had been withdrawn. The act, to be sure, was that of the Spanish intendant, but every one believed that it had been incited by France. The people of the Western waters, particularly in Tennessee and Kentucky, were outraged and demanded instant war against the aggressor. Even in Congress a war party raised its head. During all this popular clamor the self-restraint of the Administration was admirable. The annual message ignored the existence of the war party and referred to the cession of Louisiana in colorless language worthy of Talleyrand.

The Administration was not, however, without a well-considered policy. In January, at the instance of party leaders, an appropriation of two million

dollars was voted by Congress "to defray any expenses in relation to the intercourse between the United States and foreign nations"; and James Monroe was appointed Minister Extraordinary to France and Spain, to aid Livingston and Pinckney in "enlarging and more effectually securing our rights and interests in the river Mississippi and in the territories eastward thereof."

Meantime, Napoleon's colonial schemes had received a decisive check. The transfer of Louisiana had been delayed by the opposition of Godoy, who had returned to royal favor in Spain; Leclerc's invading army had been worn away by the attrition of incessant war with the negroes; a second army had been decimated by yellow fever; and finally Leclerc himself had succumbed to the dread destroyer, leaving the remnants of the French troops to their fate. Without the most extraordinary exertions, Santo Domingo was lost; and what was Louisiana without the island which was the very heart of the projected colonial system? The First Consul was almost ready to abandon a project which after all had originated in Talleyrand's brain rather than in his own. What he sought was a fair pretext to cover his retreat from failure.

Livingston plied the French Ministers with arguments to prove that it was good policy to put the Americans in possession of the Island of Orleans. One day, while he was repeating the old story, Talleyrand suddenly asked what he would give for the whole of Louisiana. For the moment Livingston was nonplussed, and declined to make any offer. Talley-

rand repeated his question and Livingston replied that twenty millions of francs would be a fair price, if France would pay the spoliation claims of American citizens since the Treaty of 1800. Talleyrand demurred: the sum was too small. Thereupon Livingston promised to advise with Monroe who was expected soon.

Monroe, as it happened, arrived on this very day. On the following day Livingston learned casually from Marbois, a minister who stood very close to the First Consul, that Napoleon had named a hundred million francs and the payment of the American spoliation claims as the price of Louisiana. Further conversation elicited the information that Napoleon would consider an offer of sixty million francs with claims amounting to twenty millions more. For a fortnight the two envoys, at the risk of losing everything, sought to secure better terms. But the First Consul would not abate his demands. On May 2, 1803, Livingston and Monroe set their signatures to a treaty by which Napoleon agreed to sell a province of which he was not in possession and which he had contracted never to alienate. The price to be paid was the sum last named, amounting in American figures to $11,250,000. The amount of outstanding claims which the United States agreed to assume was estimated at $3,750,000. After signing his name to the treaty, Livingston rose and shook hands with Monroe and Marbois. "We have lived long," he said with emotion, "but this is the noblest work of our lives."

In less exalted moments, Livingston and Monroe

may well have experienced some disquietude at what they had done. The instructions given to Monroe contemplated no more extensive purchase than New Orleans and West Florida, at a sum not exceeding $10,000,000. The envoys had set out to purchase a tract of land which controlled the delta of the Mississippi: they had acquired an empire beyond the Mississippi whose limits they did not know, at a price which exceeded their allowance by $5,000,000. Besides, it was not at first believed that West Florida was included in this purchase. Livingston was keenly disappointed, until on narrower examination he found, in the words of the treaty, evidence which satisfied him that France — to quote Mr. Henry Adams — "had actually bought West Florida without knowing it and had sold it to the United States without being paid for it." The words on which he founded his theory were those which retroceded Louisiana "with the same extent as it now has in the hands of Spain, and that it had when France possessed it, and such as it should be according to the treaties subsequently entered into between Spain and the other States." Monroe soon adopted Livingston's view and pressed it upon the President.

The news of the purchase of Louisiana reached the United States in the latter part of June and occasioned much rejoicing among stanch Republicans of the Middle and Southern States. The people east of the Alleghanies were densely ignorant about this Spanish province, but they sensed in a vague way that its possession by a power like France would have dragged the United States into the maelstrom

of European politics. The Federalists of the Eastern States looked askance at this as at every act of the Administration of Thomas Jefferson, without knowing anything about this vast domain beyond the Mississippi. The President himself was not much better informed about Louisiana. In a report to Congress he undertook to put together such information as he could cull from books of travel and pick up by hearsay. His credulity led him into some amazing statements. A thousand miles up the Missouri, he stated soberly, there was a salt mountain, one hundred and eighty miles long and forty-five miles in width, composed of solid rock salt, without any trees or even shrubs on it. He would not have believed the tale but for the testimony of travelers who had shown specimens of the salt to the people of St. Louis. Federalist newspapers made merry over the President's discovery. "Can this be Lot's wife?" asked one editor.

But Jefferson had already taken steps to dispel general ignorance about the Far West. Securing from Congress an appropriation for an expedition among the Missouri Indians, ostensibly to extend the external commerce of the United States, he commissioned his private secretary, Meriwether Lewis, and William Clark, brother of George Rogers Clark, to undertake one of the most important explorations in American annals. With a body of picked men, Lewis and Clark made their way to the upper waters of the Missouri, and passed the winter of 1804–05 among the Mandans. In the following spring and summer they crossed the Rocky Mountains to the

waters of the Columbia. Here they spent a second winter, and then began their arduous return, by way of the Great Divide, the Yellowstone River, and the Missouri, to St. Louis. The journals of the members of this expedition are a remarkable record of personal adventures and scientific observations. It was not until 1814, however, that the details of this expedition were given to the public.

Meantime, Lieutenant Zebulon Montgomery Pike had won immediate fame by publishing an account of two thrilling expeditions into the Far West. On the first expedition Pike traced the upper course of the Mississippi almost to its source; on the second, begun soon after his return to St. Louis in 1806, he followed the course of the Arkansas to the peak which bears his name. His attempt to explore the headwaters of the Rio Grande, which he mistook for the Red River, led to his capture by the Spanish authorities. After a roundabout journey through Mexico and Texas, he was released on the Louisiana frontier.

Unexpected as the acquisition of Louisiana was to the Administration, President Jefferson was quick to appreciate the vast importance of the province to the United States. "Giving us the sole dominion of the Mississippi," he wrote, "it excludes those bickerings with foreign powers, which we know of a certainty would have put us at war with France immediately: and it secures to us the course of a peaceable nation." At the same time he was equally quick to see that the acquisition would give "a handle to the malcontents." To his intimates he avowed with

the utmost frankness that the Administration had exceeded its constitutional powers. The Constitution, he conceived, did not contemplate the acquisition of territory not included within the limits fixed by the Treaty of 1783. Yet he was firmly convinced of the practical necessity of ratifying the treaty of purchase. The only way out of the dilemma, he thought, was frankly "to rely on the nation to sanction an act done for its great good, without its previous authority."

Never doubting that so benevolent a purpose would be cordially approved, Jefferson drafted an amendment to the Constitution authorizing the acquisition of Louisiana and providing for its government. To his surprise, leading Republicans received his proposal with indifference, not to say with coolness. Nicholas thought that the power to acquire territory by treaty might fairly be inferred from the Constitution, and advised the President not to run the risk of turning the Senate against the treaty by raising constitutional scruples. In much distress of spirit Jefferson replied that to assume by free construction the power to acquire territory was to make blank paper of the Constitution. If the treaty-making power could be stretched in this fashion, then there was no limit to its extent. But finding that his party did not share his scruples, Jefferson abandoned his amendment to the Constitution, "confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects." Hamilton in all the pride of triumphant Federalism had never gone further than this.

The debates in Congress over the treaty are full of interest to the student of constitutional law. The treaty fairly bristled with controversial points. The exigencies of politics played havoc with consistency. Parties seemed to have changed sides. Federalists borrowed state-rights arguments without a tremor; and Republicans employed the language of centralization with Federalist facility. Federalists from New England looked beyond the immediate issue and discerned the inevitable economic as well as political consequences of westward expansion. The men who would have naturally populated the vacant lands of Maine, New Hampshire, and Vermont would inevitably seek this "new paradise of Louisiana," observed a New England pamphleteer. Jeffersonian Democracy rather than Federalism would become the creed of these transplanted New Englanders, if Ohio were a fair example of future Western Commonwealths. Moreover, as these new States would in all probability enter the Union as slaveholding communities, they would further impair the influence of the Eastern States in the National Government. Even the remnant of the Federalist party in the South opposed the purchase of Louisiana, fearing that the Atlantic States would be depressed in influence by the formation of great States in the West.

Upon one great constitutional principle, both Federalists and Republicans were disposed to agree: that the United States had the power to acquire foreign territory, either by treaty or conquest. Senator Tracy, of Connecticut, conceded this point, but

denied that the inhabitants of an acquired territory could be admitted into the Union and be made citizens by treaty. In providing that "the inhabitants of the ceded territory shall be incorporated in the Union," the Administration had exceeded its constitutional authority. The consent of all the States was necessary to admit into the Union. Senator Pickering, of Massachusetts, held the same view. "I believe the assent of each individual State to be necessary," said he, "for the admission of a foreign country as an associate in the Union, in like manner as in a commercial house the consent of each member would be necessary to admit a new partner into the company." To this line of argument, Taylor, of Virginia, replied that the words of the treaty did not contemplate the erection of the ceded territory as a State, but its incorporation as a Territory.

On October 17, 1803, the Senate ratified the treaty by a vote of twenty-four to seven. Two constitutional principles seemed, therefore, to be decided: the Government had a constitutional right to acquire foreign territory; and the treaty-making power could incorporate — whatever that expression might mean — such territory into the Union. A third matter of policy had yet to be determined: what powers had Congress over the new territory? Two courses lay open, either to make Louisiana a part of the "territory" which the Constitution gives Congress power to "dispose of," or to hold the province as a dependency apart from other organized Territories. The provisional act which Congress adopted pointed in this latter direction, since it authorized the Presi-

dent to take possession of the province and concentrated all powers, civil and military, in the hands of agents to be appointed by him. When objection was made that such despotic authority was incompatible with the Constitution, Rodney, of Maryland, declared in the House of Representatives that Congress had a power in the Territories which it could not exercise in the States, and that the limitations of power found in the Constitution were applicable to States and not to Territories. The Republicans were making rapid progress in learning the vocabulary of Federalism.

It is one of the ironies of history that the province over which parties battled with so much display of legal profundity was not yet in the possession of the First Consul. Six months after the ratification of the treaty, in the old Cabildo at New Orleans, Laussat received from the Spanish governor the keys of the city and took possession of the province in the name of his master. For twenty days the Tricolor floated over the Place d'Armes, emblem of the shadowy French tenure. On December 20, it, in turn, gave place to the Stars and Stripes, as Louisiana passed into the hands of the last of its rulers, the puissant young republic.

In the following year Congress divided the province, giving to the southern part, the Territory of Orleans, which contained most of the inhabitants, a separate territorial government, and annexing the sparsely settled upper part to the Indiana Territory. The Act of 1804 was roundly abused because it gave to the President the appointment of all officers in

the Territory of Orleans, even the appointment of the legislative council of thirteen. By the treaty, it was pointed out, the inhabitants of Louisiana were guaranteed all "the rights, advantages, and immunities of citizens of the United States." Was not representative government one of these privileges? The obvious answer was the unpreparedness of the Spanish inhabitants for Anglo-American institutions. To the Western American who floated down the Mississippi, past the cotton-fields and sugar plantations cultivated by African negroes, and who landed his cargo on the levee at New Orleans, among the motley throngs, province and city seemed like a foreign country, and the inhabitants aliens in speech and habits. From the buildings, with their many arcades and balconies and varied coloring, to the courts of law where the Code Napoléon, introduced by Laussat, added confusion to the Spanish law, the atmosphere of New Orleans was that of a city of the Old World, where one civilization was superimposed upon an older. Men bred in the traditions of the English law might reasonably doubt whether the people of Louisiana were ready for self-government.

Before the new territorial government could be organized, a remonstrance had been drawn up by the people of Louisiana and forwarded by three commissioners with all possible dispatch to Washington. In the following year (1805), Congress so far yielded to the complaints of the people of Louisiana as to authorize an elective assembly and to hold out the promise of eventual statehood.

But what were the bounds of Louisiana? No one

knew with certitude. The letters of Livingston and Monroe had convinced Jefferson that Louisiana included at least West Florida, and for two years he sought by every diplomatic device to wrest from Spain a confirmation of this shadowy title. That Spain did not intend to cede West Florida and that France had no expectation of receiving it seems clear enough from the instructions to Laussat. What he handed over to the American representative was Louisiana, with the Rio Bravo and the Iberville as boundaries. With some show of right, Jefferson might have occupied Texas; he preferred, however, to chase his phantom claim to Florida. For Texas nobody then cared, but the Floridas were coveted by Southern planters.

In a letter written soon after the signing of the Louisiana Treaty, Robert Livingston relates a suggestive conversation which he had with Talleyrand. "What are the eastern bounds of Louisiana?" asked Livingston rather naïvely. "I do not know," replied Talleyrand; "you must take it as we received it." "But what did you mean to take?" Livingston insisted. "I do not know," was the reply. "Then you mean that we shall construe it our own way?" "I can give you no direction," replied the astute Frenchman. "You have made a noble bargain for yourselves, and I suppose you will make the most of it."

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CHAPTER IX

FACTION AND CONSPIRACY

DOWN to the end of the eighteenth century, the people of New England possessed a greater degree of social solidarity than any other section of the Union. Descended from English stock, imbued with common religious and political traditions, and bound together by the ties of a common ecclesiastical polity, they cherished, as Jefferson expressed it, "a sort of family pride" which existed nowhere else between people of different States. In New England, there were elements of political and religious dissent, to be sure, but the domination of the Congregational clergy and the magistracy was hardly less complete in the year 1800 than fifty years earlier. New England was governed by "the wise, the good, and the rich." All the forces of education, property, religion, and respectability were united in the maintenance of the established order against the assaults of democracy. New England Federalism was not so much a body of political doctrines as a state of mind. Abhorrence of the forces liberated by the French Revolution was perhaps the dominating emotion. Democracy seemed an aberration of the human mind, which was bound everywhere to produce the same results in society. Jacobinism was the inevitable outcome. "The principles of democracy are everywhere what they have been in France," wrote Ames.

"Democracy is a troubled spirit, fated never to rest, and whose dreams, if it sleeps, present only visions of hell."

In 1801, New England was in bitter, irreconcilable opposition to the National Administration. The situation was fraught with grave possibilities. Jefferson himself looked forward to "an uneasy government," if the whole body of New England continued in opposition to Republican principles. Ordinary political opposition was to be expected, of course; but a sectional opposition, fortified by a social solidarity like that of New England, was a menace to the Union. From the moment when he took the oath of office, Jefferson directed his best energies to the Republican conquest of New England. It was a policy dictated not only by partisan considerations, but also by the highest instincts of statesmanship. The fair-minded historian is bound to record that the Jeffersonian party in this period of its history was, in spite of all its inconsistencies, a potent agency in the maintenance of the Union.

The first conquest of the Republicans was that of Rhode Island in the first year of the new Administration. The President was deeply gratified by what he called "the regeneration of Rhode Island," interpreting the event as "the beginning of that resurrection of the genuine spirit of New England." Vermont, he prophesied, would next emerge from under the yoke of the Federalist hierarchy; and the fall election verified his prediction. Elsewhere the contest was more stubborn and prolonged, but the Federalists noted with alarm that the Republican

vote was increasing everywhere. By the end of Jefferson's first term, the number of Republican voters in New England very nearly equaled that of their opponents.

The ranks of the Republican party were recruited largely from the rural districts, where hostility to the mercantile and moneyed classes was most bitter. It was the old alignment of the men of little or no personal property against the prosperous and well-to-do classes. From this point of view the Republican movement was an attack upon the privileged orders, an attempt to break down the social hierarchy of New England. Closely connected with the political movement was also the struggle of the Baptists and the Methodists to secure religious freedom in Massachusetts and Connecticut. The dissenters looked to Jefferson as their natural leader; and the bitter opposition of the Congregational clergy to the spread of democracy was due to their persistent, and no doubt sincere, belief that dissent and democracy were manifestations of the same radical and destructive spirit.

The rising tide of Republicanism and the increasing popularity of the Administration cast the Federalist leaders into the deepest gloom. The annexation of Louisiana was regarded as a mortal blow, since it imperiled the ascendency of New England in the Union, and New England was the stronghold of Federalism. At the beginning of the year 1804, most of the Federalist members of Congress from New England were agreed in thinking that a crisis was approaching. Democracy was about to triumph

over the forces of law and order. The only question was how to save their section, where the ravages of Jacobinism could yet be stayed. There was but one answer, from the point of view of Senator Timothy Pickering. The people of the Eastern States could not reconcile their habits, views, and interests with those of the South and West: therefore, let them withdraw from the Union and form a Northern Confederation. Plumer, of New Hampshire, and Tracy and Griswold, of Connecticut, were in hearty agreement with this view. Pickering then put his project before the members of the coterie of Federalists in Massachusetts, which was generally known as the "Essex Junto." As the confederacy shaped itself in Pickering's imagination, it would of necessity include New York, which would act as a barrier to the insidious inroads of Southern Jacobinism; but Massachusetts should initiate the movement.

Replying for his intimates in the Essex Junto, George Cabot put aside the project, not as in any wise morally reprehensible, — on the contrary, he thought separation desirable, — but as impracticable. The people of New England were not aware of their danger and therefore not prepared for so radical a movement. The only chance for a successful revolution, Cabot thought, would be "a war with Great Britain manifestly provoked by our rulers." Pickering and Griswold then turned to New York for support and to Aaron Burr.

The Vice-President was at this time without political influence in the Administration, and without

credit, either morally or politically. In New York, the Livingstons and the Clintons, whom he had mortally offended, were determined to drive him from the party. At first, Burr was inclined to give way: he even applied to the President for an executive appointment; but this resource failing, he determined to fight his enemies to the bitter end. In February, 1804, he was nominated for governor by a group of his friends in the legislature, in opposition to the Clinton faction. It was well known that many Federalists would support his candidacy. At this crucial moment, Pickering and Griswold sought out Burr as an ally. As Governor of New York, they intimated, he would be in a strategic position and could take the lead in the secession of the Northern States. His leadership in the movement, in short, was to be the price of Federalist support at the polls. But the shifty Burr would not commit himself further than to promise an administration satisfactory to the Federalists. The conspirators had to rest content with this vague assurance and to count on Burr's ambition, and his desire to be revenged upon his enemies, to bind him to their cause.

Meantime, Alexander Hamilton was straining every nerve to prevent the Federalists from indorsing the man who stood in the way of his own ambition and whom he believed to be a dangerous and unprincipled character. Some vestige of prudence kept the party from committing itself openly to Burr, but its vote was cast for him. Burr carried his old stronghold, New York City, but he was beaten elsewhere in the State. The hopes of the Federal-

ists were shattered; the conspirators were confounded; and the bubble of a Northern Confederacy vanished.

The immediate consequences of this political episode were personal. Hamilton had again thwarted the ambitions and incurred the deadly enmity of an embittered political desperado. A challenge followed and was accepted. On a summer morning, July 11, 1804, at Weehawken across the Hudson, the rivals faced each other for the last time. Hamilton threw away his fire: Burr aimed with murderous intent, and Hamilton fell mortally wounded. From this moment Burr was a marked man and an outcast from respectable society in the East. The newer society of the West, less sensitive in such matters, thought none the less of a man who had shot his foe in a fair fight. Thither Burr betook himself when his term of office expired.

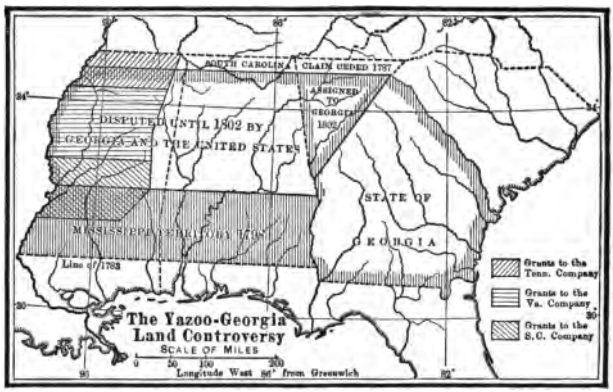
As the presidential election approached, the Republicans determined to prevent any recurrence of the accident which had so nearly seated Burr in the President's chair. This resolve took the form of a constitutional amendment which provided that presidential electors should designate on distinct ballots the persons voted for as President and Vice-President. To change the Constitution in this wise was a delicate matter. No part of the work of the Federal Convention had been more difficult than to reconcile the small-State party to the mode provided for the election of a President. The final settlement had been accepted only in the expectation that in most cases the electoral college would fail to elect, and

that a choice would then be made by the House of Representatives, where the small States would have an equal voice with the large States. To remove the chances of an election by the House was to upset the original compromise and to increase the importance of the large States in the initial election.

Another consequence would follow the proposed change. The office of Vice-President would be degraded. Roger Griswold clearly foresaw this eventuality. "The office will generally be carried into the market," said he, "to be exchanged for the votes of some large States for President; and the only criterion which will be regarded as a qualification for the office of Vice-President will be the temporary influence of the candidate over the electors of his State." Notwithstanding these and many less obvious objections, the amendment was adopted by a party vote in Congress and promptly ratified by thirteen out of the sixteen States before the fall elections.

The campaign of 1804 was uneventful. The congressional caucus of the Republican party dropped Burr as a candidate and nominated George Clinton, of New York. Jefferson was the unanimous choice of his party. The depressed Federalists supported Charles Cotesworth Pinckney, of South Carolina, and Rufus King, of New York, as their candidates. Jefferson was triumphantly reëlected with the loss of only two States, Connecticut and Delaware, and of two electoral votes in Maryland. Well might he exult at the discomfiture of his enemies. "The two parties," he wrote to Volney, "are almost melted into one."

Below the calm surface of Republican politics, however, dangerous counter-currents swirled. For a time the controversy over the Yazoo land claims seemed likely to be a reef on which Republican unity would be shattered. Both the United States and Georgia laid claim to the great Western tract



which is now occupied by the States of Mississippi and Alabama. But Georgia with a stronger *prima facie* case evinced little regard for the claims of the Federal Government. In 1795, while a mania for land speculation was sweeping over the country, the legislature yielded to corrupt influences and sold some thirty-five million acres in the disputed territory for the sum of $500,000 to four land companies. In the following year, the people of Georgia rose in their wrath, turned out the corrupt legislators, and forced the passage of a rescinding act. Meantime, sales had been made by the Yazoo speculators to guileless purchasers, who now appealed to

Congress for relief. In 1798, Congress enacted a law providing for commissioners who should confer with Georgia regarding these conflicting claims. At the same time the Territory of Mississippi was organized.

Such was the status of the Yazoo land claims when Jefferson became President. It fell to him to appoint the federal commissioners. They wrestled manfully with the perplexing details of the controversy, and in 1802 reported what they believed to be a fair settlement of the claims of all parties. Georgia was to cede her Western lands to the United States in return for a payment of $1,250,000 and an agreement on the part of the Federal Government to extinguish all Indian titles within her limits as soon as might be. In the course of time this Western territory was to be admitted as a State. Five million acres were to be set aside to satisfy the claims of those who had suffered loss by the rescinding act of Georgia.

The morbid imagination of John Randolph could see nothing but jobbery in this proposal to satisfy claims which had been fraudulently obtained from the Legislature of Georgia. There can be little doubt that Randolph's hatred for Madison, who was a member of the federal commission, influenced his subsequent action. On two occasions, in 1804 and again in 1805, he assailed the proposed compromise, and twice he secured a postponement, though he could not defeat the bill which embodied the conclusions of the commission. From this time on Randolph was never more than an uncertain ally of the Ad-

ministration. The few politicians who still followed his lead were styled rather contemptuously "Quids." Even Republicans with slender classical training grasped the significance of a *tertium quid*. Yet Randolph was still a power in the House.

The Yazoo affair dragged on for years. In 1810, a decision of the Supreme Court gave aid and comfort to the opposition. In the case of *Fletcher* v. *Peck*, the court held that the original Act of 1795, conveying the Yazoo grants, was a contract within the meaning of the Constitution which might not be impaired by subsequent legislation. It was not until 1814 that Congress voted $8,000,000 to the claimants under this act and so settled one of the most obstinate controversies in the history of Congress.

In the fall of 1805, Jefferson seemed about to realize what had been the object of his diplomatic endeavors ever since the acquisition of Louisiana. Intimations came from Talleyrand that the Floridas might be obtained by purchase if the United States would prevail upon Spain to refer the whole dispute to Napoleon. On December 3, 1805, he sent a message to Congress which seemed to break completely with all Jeffersonian precedents. It recounted the failure of negotiations with Spain, and spoke sternly of the depredations committed in the new Territories by Spanish officers and soldiers. The Administration had found it necessary to order the troops on the frontier to be in readiness to repel future aggressions. Some of the injuries committed admitted of a peaceable remedy. Some of them were "of a nature to be met by force only, and all of them may

lead to it." Coupled with these admonitions were suggestions for the fortification of seaports, the building of war-vessels, and the organization of the militia.

Coming from the pen of one who had written that peace was his passion and who had hitherto avoided war with Quaker-like submission, this message caused bewilderment on all sides. The West, however, took the President literally and looked forward with enthusiasm to a war which was bound to end in the overthrow of Spanish dominion in the Southwest. Three days later a secret message was delivered to the House of Representatives announcing that Spain was disposed to effect a settlement "so comprehensive as to remove as far as possible the grounds of future collision and controversy on the eastern as well as the western side of the Mississippi." Only a show of force was needed "to advance the object of peace."

Randolph for one was thoroughly disgusted by "this double set of opinions and principles"; and his ill-temper gave vent to biting invective when he learned, that as chairman of the Committee of Ways and Means he was expected to propose an appropriation of $2,000,000 for the purchase of Florida. He refused flatly to assume the responsibility "of delivering the public purse to the first cut-throat that demanded it," for Madison had said in private conversation that the money was destined for Napoleon. The opposition of Randolph caused weeks of delay. It was not until March 13 that Madison could authorize Armstrong, minister to France, to offer

$5,000,000 for Florida and Texas. It was then too late. Either Armstrong had been misled or Napoleon had changed his mind: in either case, the favorable moment had passed. The purchase of Florida was indefinitely deferred.

During these months, when relations with Spain were strained to the breaking point, Aaron Burr was weaving the strands of one of the most intricate and baffling intrigues in American history. Shortly after relinquishing the office of Vice-President, Burr undertook an extensive tour through the West. In the course of his voyage down the Ohio he landed on Blennerhassett's Island, which an eccentric Irish gentleman of that name had transformed into an estate. At Cincinnati he was the guest of Senator John Smith; and there he met also Jonathan Dayton, who had just finished his term as Senator from New Jersey. Both of these individuals played an uncertain part in Burr's plans. At Nashville he visited General Andrew Jackson; at Fort Massac he spent four days in close conference with General James Wilkinson, who was in command of the Western army — one of the most precious rascals in the annals of the country; and at New Orleans he put himself in touch with the Mexican Association, which had been formed by ardent individuals who looked forward to war with Spain and the liberation of Mexico.

To men like Andrew Jackson and Daniel Clark, of New Orleans, whose loyalty is beyond question, Burr announced his purpose to devote his life to the overthrow of the Spanish power in America. It was a mission which commended itself to the Spanish-hating

people of the Mississippi Valley. Western newspapers announced that he meditated some extraordinary enterprise; and one editor hinted that he was plotting a revolution which would end in the formation of a separate government for the region bordering on the Ohio and the Mississippi.

Returning to the East, Burr left no stone unturned in his efforts to find funds to finance this mysterious enterprise. He was in conference with Merry, the British minister, and with Yrujo, the Spanish minister; and each received a different impression as to the scope of his plans. At one time Burr talked madly of seizing the government at Washington. The kaleidoscopic changes of his plans baffle consistent explanation. One thing only is clear: he needed funds. These he obtained in part from his son-in-law, Joseph Alston, a wealthy planter in South Carolina, and in part from the credulous Blennerhassett, who was persuaded to purchase a million acres on the Washita River in northern Louisiana. Thither the expedition which started out from Blennerhassett's Island was ostensibly directed. How far Burr's plans went beyond the occupation of this tract is a matter of conjecture. One of Blennerhassett's servants may inadvertently have told the truth when he said that they were "going to take Mexico, one of the finest and richest places in the whole world."

If Burr seriously contemplated a filibustering expedition against Mexico, he was favored by circumstances. Spanish troops had taken up a position east of the Sabine River, on what was American soil; and only an overt act was needed to precipitate war.

Every frontiersman was preparing for a tussle with the hated Spaniard. In the event of war Burr knew well enough that an expedition against Mexico would be countenanced by the government at Washington. Whether or no war with Spain would occur depended upon the coöperation of General Wilkinson, for he had been charged by the Secretary of War to take command of the troops at New Orleans with as little delay as possible and "to repel any invasion of the territory of the United States east of the river Sabine, or north and west of the bounds of what has been called West Florida."

The delay of Wilkinson in following these orders of May 6, 1806, has been explained on the supposition that he was awaiting the development of Burr's plans. Be that as it may, his hesitation was fatal to the conspirators. On September 27, the Spanish troops retired beyond the Sabine, thus removing an excellent pretext for war. From this time on Wilkinson's hand is against Burr. His conduct is enveloped in an atmosphere of intrigue. At one moment he is sending alarmist dispatches to the President, warning him against a mysterious expedition which was being prepared — by what authority he professed not to know — against the Spanish province of Mexico; at the next moment he is intriguing with the Spanish authorities, warning them against Burr and assuring them of his protection. This valuable information Wilkinson thought was worth about $111,000; but his aid-de-camp seems to have returned empty-handed from the City of Mexico. His further exploits in New Orleans, which he kept in a

state of perpetual alarm and finally put under martial law, read like a chapter from a melodrama.

It was not until October, 1806, that President Jefferson expressed any serious concern about Burr's intrigues. Even then he concluded to send only a confidential agent to watch the conspirator and to arrest him if necessary. In November, dispatches from Wilkinson convinced the President of the need of more summary action. On November 27, he issued a proclamation, stating that sundry persons were confederating and conspiring together to begin a military expedition or enterprise against the dominions of Spain. Honest and well-meaning citizens were being seduced under various pretenses to engage in the criminal enterprises of these men. All faithful citizens and the civil and military authorities were therefore enjoined to be vigilant in preventing the expedition and in bringing the conspirators to punishment.

The President's proclamation wrought a transformation in the temper of the West. People reasoned that the danger must be greater than any one had suspected. The newspapers began to print wild stories. The Legislature of Ohio authorized the governor to take proper measures to prevent acts hostile to the United States. The governor promptly seized the bateaux which were being constructed at Marietta and called out the militia to overpower Blennerhassett and his followers. On the Virginia side of the river, the militia were in readiness for a descent upon the island. On the night of December 10, Blennerhassett and a handful of men left the island in such

boats as they could find. Wild rumors followed the expedition as it floated peacefully down the Ohio. The *Western Spy* told its readers that Blennerhassett had passed Cincinnati in keel boats loaded with military stores; that more were to follow; and that twenty thousand men had been enlisted in an expedition against Mexico.

Meantime, Burr had met with embarrassing delays. The promised recruits had not come in, since war had not been declared. Only two of the five boats which Jackson had agreed to build were ready. Nevertheless, Burr left Nashville on December 23, as he had planned, and on the next day joined Blennerhassett at the mouth of the Cumberland. The combined strength of this flotilla which was causing such public consternation was nine bateaux, carrying less than sixty men.

The voyage of the expedition down the Ohio and the Mississippi was without incident until January 10, when the expedition put into Bayou Pierre, in the Mississippi Territory. There Burr was put under arrest and brought before a grand jury. Luck again favored him. As in Kentucky, so here the jurors failed to find any ground for indictment. Nevertheless, the judge bound Burr over to appear from day to day. Holding this proceeding unauthorized by law, Burr forfeited his bond and made his escape; but near Fort Stoddert, he was again apprehended. On March 5, 1807, he was sent with a guard of six men from Fort Stoddert to Richmond, Virginia.

The commitment, indictment, and trial of Aaron Burr form a fittingly inconclusive sequel to a strange

tale of intrigue and misadventure. Not merely the fate of the accused man, but the personalities involved, gave a spectacular character to the legal proceedings at Richmond. Arrayed as counsel on the side of Burr were three notable attorneys from Virginia, and Luther Martin of Maryland. The foreman of the grand jury was John Randolph. The chief witness for the prosecution was General Wilkinson. The presiding judge was Chief Justice John Marshall, within whose circuit Blennerhassett's Island lay. And behind the prosecution, straining every nerve to secure the conviction of the conspirators, was President Thomas Jefferson.

From first to last the Chief Justice made the task of the prosecution exceedingly difficult by a rigorous definition of treason. Treason involved an overt act, he insisted; the actual levying of war by an assembling of armed men. To convict of treason, the testimony of two witnesses was required by the Constitution. Now, Burr was hundreds of miles away from Blennerhassett's Island when the alleged overt act of treason was committed. The court would not admit any testimony relative to the conduct and declarations of Burr elsewhere and subsequent to the transactions on Blennerhassett's Island. Such testimony was in its nature merely corroborative, the Chief Justice ruled, and inadequate to prove the overt act in itself, and therefore irrelevant until the overt act was proved by the testimony of two witnesses. On September 1, the prosecution abandoned the case, and the jury returned a verdict of not guilty. The Government now sought to secure the conviction of

Burr on the charge of misdemeanor; but less than a week was needed to reveal the weakness of the testimony put forward by the prosecution. On September 15, Burr was again acquitted.

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CHAPTER X

PEACEABLE COERCION

THE so-called Peace of Amiens in 1802 proved to be only an interlude in the wars of France with Europe. Within two years hostilities were renewed which closed only with the battle of Waterloo. In the course of this prolonged conflict Napoleon won and lost for France the ascendency in central and western Europe, but Great Britain remained throughout mistress of the seas. The commerce of France and of Holland and Spain, which had become virtually her dependencies, was almost driven from the seas. For their foodstuffs and colonial supplies, more than ever in demand as war devastated the fields of Europe, these nations had to look to vessels flying neutral flags. The export trade of the United States, which had fallen from $94,000,000 in the year 1801 to $55,800,000 in 1803, rapidly recovered until in 1805 it passed the high-water mark of the earlier year. More than half of this trade was in products of the tropics, for while the direct trade between the West India colonies and Europe was forbidden by the so-called "Rule of 1756," American shippers carried on a lucrative traffic which was virtually direct. Products brought from the West Indies to American ports were promptly reshipped as part of American stock to European ports; and the British courts had held that this importation had broken the

voyage. When once import duties had been paid in an American port, the courts refused to inquire what thereafter became of the cargo and whether in fact rebates were given on exportation.

In midsummer of 1805 occurred a reversal of British policy. In the case of the Essex, which had made the voyage from Charleston to London with colonial produce from Martinique, a British admiralty court ruled for the first time that the payment of import duties was not sufficient proof of *bona fide* importation, because of the practice in the United States of repaying duties on exportation. Other seizures followed that of the Essex, to the consternation of American shippers. Insurance rates on cargoes were doubled and doubled again within a year. Early in 1806, Monroe, then Minister to England, wrote in protest to the British Ministry that "about one hundred and twenty vessels had been seized, several condemned, all taken from their course, detained, and otherwise subjected to heavy losses and damages." But Monroe could not obtain any concession of principle or promise of indemnity.

The policy which the Secretary of State was known to favor was that of coercing England through restrictions upon trade. The implications of this policy were suggested by his often-quoted remark touching upon the dependence of British manufacturers: "There are three hundred thousand souls who live by our custom: let them be driven to poverty and despair, and what will be the consequences?" He lost no opportunity to urge upon his party associates the need of passing retaliatory legislation against

Great Britain. It was well known, of course, that the President would support any fair application of his theory of peaceable coercion.

At first there was a general disposition to try the effect of an embargo; but more prudent counsels prevailed when the news of Trafalgar reached America. Congress finally adopted, in April, 1806, a non-importation bill, which was to become effective eight months later. There was some point to Randolph's criticism when he declared it to be "a milk-and-water Bill. A dose of chicken broth to be taken nine months hence"; for the act prohibited only the importation of such English goods as could be manufactured in the United States or procured elsewhere. Such a measure was not likely to make the manufacturers of England quail. In the mean time, the Administration was to accomplish what it might by direct negotiation with the British Ministry, using this Nicholson Act as a covert threat. Much against his will, Jefferson had to nominate another envoy to act with Monroe. His choice fell upon William Pinkney, of Maryland. The friends of Madison were not unwilling to humiliate Monroe, whose presidential aspirations might interfere with Madison's succession, for Jefferson had let it be known as early as the summer of 1805 that he did not seek a reëlection.

A few days after Congress adjourned occurred the Leander episode. This frigate was one of several British war vessels whose presence in American waters was a constant menace to merchantmen and an insult to the National Government. From time to time they appeared off Sandy Hook, lying in wait

for American vessels which were suspected of carrying British seamen who had fled from the hard conditions of service on ships of war. An American merchantman was likely at any time to be stopped by a shot across her bow and to be subjected to the humiliation of a visit from a search crew. On April 25, 1806, the Leander, in rounding up a merchantman, fired a shot which killed the helmsman of a passing coasting sloop. The incident or accident threatened to assume the proportions of a *casus belli*.

The practice of impressment was an old grievance which seemed to Americans devoid of any justification. From the British point of view there was much to be said in extenuation of the practice. It should not be forgotten that Great Britain was locked in a life-and-death struggle with a mighty antagonist, and that she had need of every able seaman. Owing to the rigorous life on board of men-of-war, every ship's crew was likely to be depleted by desertions whenever she touched at an American port. Jack Tar found life much more agreeable on an American merchantman; and he rarely failed to procure the needful naturalization papers or certificates which would give him a claim to American citizenship. The right of expatriation was not at this time conceded by the British Government. Once an Englishman, always an Englishman. Surely, then, British commanders might claim their own seamen on the high seas. Officially, at least, they never claimed the right to impress American seamen. Yet where differences of speech were so slight, the provocation so strong, and the needs of the navy so great, search

crews were not always careful to distinguish between Britishers and Yankees.

The United States never admitted the justice of these claims. To concede the right of search on the high seas was to admit a vast extension of British jurisdiction. As early as 1792, Jefferson had stated the principle for which the United States had consistently contended: "The simplest rule will be that the vessel being American shall be evidence that the seamen on board of her are such." The principle was never accepted by any British ministry. The practice of impressment continued to harass each succeeding administration. In 1806, a crisis seemed at hand. Madison reported to the House of Representatives the names of nine hundred and thirteen persons who appeared to have been impressed from American vessels. How many of these were British deserters under American names, it is impossible to say. The number reported by Madison is at least an index to the sense of injury which the nation felt.

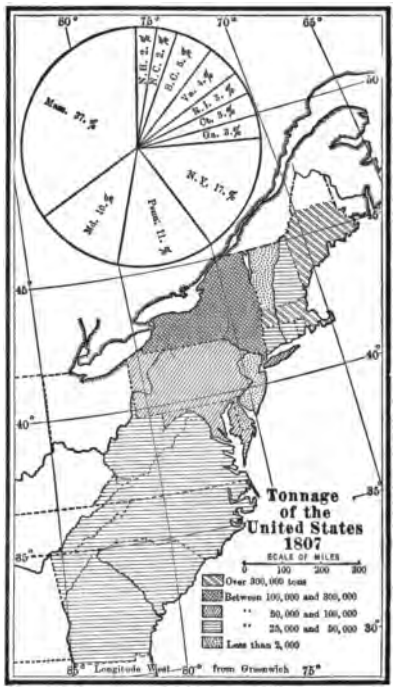
When President Jefferson sent Pinkney to join Monroe in securing a comprehensive treaty with Great Britain, which should restore West India trade to its old condition and provide indemnity for the American vessels condemned in the admiralty courts, he set down, as a *sine qua non* in his instructions, the renunciation by the British Government of the practice of impressment. It was an ultimatum which expressed a truly national feeling; but with the consciousness of power which the domination of the high seas gave, the British commissioners treated

this ultimatum, somewhat contemptuously, as an impossible and unwarranted demand. The American mission should have ended then and there; but on obtaining assurances that greater care would be exercised in impressing seamen, Monroe and Pinkney determined to disregard their instructions. Negotiations were continued and culminated in a treaty, December 1, 1806, which ran counter to the injunctions of the President in every particular. He refused to submit the document to the Senate. Nevertheless, he permitted Madison to draft new instructions for the commissioners, in the hope that the treaty could be made a basis for further negotiations. While these new instructions were crossing the ocean, a disaster occurred which brought the United States and Great Britain to the verge of war.

In the early months of 1807, some French frigates had run up Chesapeake Bay to escape a British squadron. Relying on what Jefferson pleasantly termed the hospitality of the United States, these British men-of-war dropped anchor in Lynnhaven Bay, near Cape Henry, where they could watch the passage through the capes. From one of these British vessels a boat crew of common seamen made their escape to Norfolk. Just at this time the new frigate Chesapeake, which had been partially fitted out at the navy yard at Washington for service in the Mediterranean, dropped down to Hampton Roads to receive her complement of guns and provisions for a three years' cruise.

On June 22, the Chesapeake passed out through the capes, preceded by the Leopard, a British frigate

of fifty guns. When they were well out on the high seas, the Leopard drew alongside the Chesapeake and signaled that she had a message for Commodore Barron. This message proved to be an order from Admiral Berkeley at Halifax, instructing commanders of British vessels who fell in with the Chesapeake to search her for deserters. The American commander denied that he had deserters on board and refused to allow the search. Almost immediately the Leopard approached with her gun-decks cleared for action. Unaware of his danger Commodore Barron had not called his crew to quarters. The Leopard opened fire and poured three broadsides into the helpless American vessel, killing three men and wounding eighteen others. After fifteen minutes Barron hauled down his flag to spare his crew from



needless sacrifice, and suffered the British commander to search the dismantled Chesapeake. Four alleged deserters were found and taken away, three of whom subsequently were proved to be American citizens. The Leopard then returned to the squadron off Cape Henry, while the Chesapeake limped back to Hampton Roads.

Had the President chosen to go to war at this moment, he would have had a united people behind him. But Thomas Jefferson was not a martial character. His proclamation ordering all armed British vessels out of American waters and suspending intercourse with them if they remained, was so moderate in tone as to seem almost pusillanimous. John Randolph called it an apology. Instead of demanding unconditional reparation for this outrage, Madison instructed Monroe to insist upon an entire abolition of impressments as "an indispensable part of the satisfaction." The astute Canning, who had become Foreign Secretary in the new Portland Ministry, took advantage of this confusion of issues to evade the demand for reparation until popular passion in the United States had subsided. It was not until November that Canning took active measures. He then sent a special commissioner to the United States in the person of George Rose.

The instructions which Rose carried with him to Washington, in January, 1808, were anything but conciliatory. As a preliminary to any negotiations, he was to demand the recall of the President's proclamation of July 2, and an explicit disavowal of Commodore Barron's conduct in encouraging deser-

tion from His Majesty's navy. The United States was also to give assurances that it would prevent the recurrence of such causes as had provoked the display of force by Admiral Berkeley. That the Administration should have continued negotiations after the full purport of these instructions was disclosed, seems incredible; but it was not until the middle of February that Madison awoke to the fact that the United States was being invited to "make as it were an expiatory sacrifice to obtain redress." Yet another month passed before Rose was given to understand that his mission was futile. By this time public attention was engrossed in the contest for neutral rights.

Before the close of the year 1806, Napoleon was master of central Europe and in a position to deal his premeditated blow at the commercial ascendency of England. A fortnight after the terrible overthrow of Prussia at Jena, he made a triumphal entry into Berlin. From this city he issued, on November 21, the famous decree which was his answer to the British blockade of the continent. Since the British had determined to ruin neutral commerce by an illegal blockade, so the preamble read, "whoever deals on the continent in English merchandise favors that design and becomes an accomplice." All English goods henceforth were to be lawful prize in any territory held by the troops of France or her allies. The British Isles were declared to be in a state of blockade. Every American or other neutral vessel going to or coming from the British Isles, therefore, was subject to capture.

The British Ministry took up the gauntlet. An order in council of January 7, 1807, forbade neutral trade between ports under the control of France or her allies; a second order, November 11, closed to neutrals those European ports under French control "as if the same were actually blockaded," but permitted vessels which first entered a British port and paid port duties to sail to any continental port. Only one more blow seemed needed to complete the ruin of American commerce. It fell a month later, December 17, 1807, when Napoleon issued his Milan Decree. Henceforth any vessel which submitted to be searched by an English cruiser or which paid any tonnage duty to the British Government or which set sail for any British port was subject to capture and condemnation as lawful prize. Such was to be the maritime code "until England returned to the principles of international law which are also those of justice and honor."

American commerce was now, indeed, between the hammer and the anvil. The Nicholson Non-Importation Act, which had been twice suspended and which had only just gone into effect (December 14), seemed wholly inadequate to meet this situation. It had been designed as a coercive measure, to be sure, but no one knew precisely to what extent it would affect English trade. The time had come for the blow which Jefferson and his advisers had held in reserve. On December 18, the President sent to Congress a message recommending "an immediate inhibition of the departure of our vessels from the ports of the United States." The Senate responded

by passing a bill (which Jefferson probably drafted) through its three stages in a single day; the House passed the measure after only two days of debate; and on December 22, the Embargo Act received the President's signature.

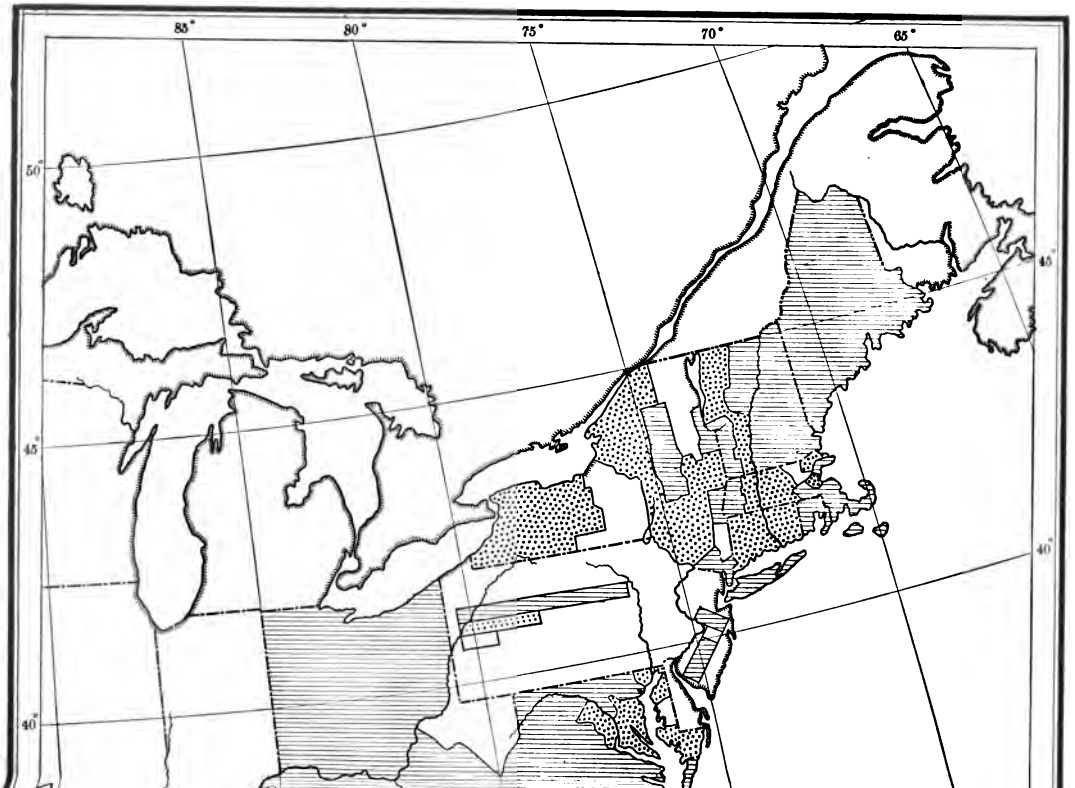
The temper of those who supported the embargo was reflected by Senator Adams, of Massachusetts, who was reported to have said: "The President has recommended the measure on his high responsibility. I would not consider, I would not deliberate; I would act." Yet there were members of Congress who were not prepared to accept the high authority of the President. The vote in the House of Representatives indicates that opinion was divided in Adams's own State. Boston with its environs and the interior counties were opposed to the embargo. New York was also divided, though here the commercial areas favored the measure. Maryland showed a like division of opinion. Connecticut was a unit in opposing the President's policy.

What was the measure which was accepted almost without discussion on "the high responsibility" of the President? So far as it was defended at all, it was presented as a measure for the protection of American ships, merchandise, and seamen. It forbade the departure of all ships and vessels in the ports of the United States for any foreign port, except vessels under the immediate direction of the President. Foreign armed vessels were exempted as a matter of course from the operation of this act; so also were all vessels in ballast or already loaded with goods at the time when the act was passed. Coasting

vessels were to give bonds double the value of vessel and cargo to re-land their goods, wares, or merchandise in some port of the United States.

American shippers were so little appreciative of the protection offered by a benevolent Government that they evaded the embargo from the very first. Foreign trade was lucrative in just the proportion that it was hazardous. If some skippers obeyed, the profits were so much the greater for the less conscientious. Under guise of engaging in the coasting trade, many a ship's captain with the connivance of the owner landed his cargo in a foreign port. A brisk traffic also sprang up by land across the Canadian border.

All pretense that the embargo was designed to protect American commerce had now to be abandoned. Jefferson did not attempt to disguise his purpose to use the embargo as a great coercive weapon against France and Great Britain. Congress passed supplementary acts and suffered the President to exercise a vast discretionary power which was strangely at variance with Republican traditions. "When you are doubtful," wrote the President with reference to coasting vessels, "consider me as voting for detention." "We find it necessary," he informed the governors of the States, "to consider every vessel as suspicious which has on board any article of domestic produce in demand at foreign markets." Governors of those States which consumed more wheat than they produced were to issue certificates to collectors of ports stating the amount desired. The collectors in turn were to authorize merchants in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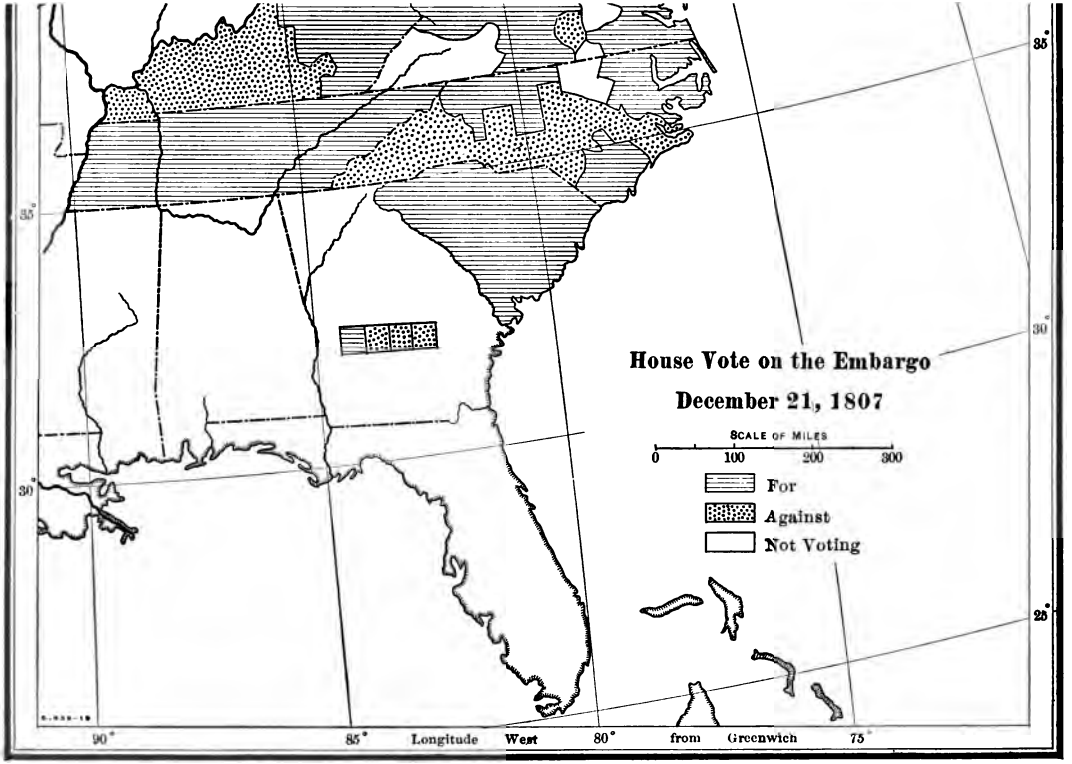
House Vote on the Embargo
December 21, 1807
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Longitude West from Greenwich

whom they had confidence to import the needed supplies. Nor did the President hesitate to put whole communities under the ban when individual shipowners were suspected of engaging in illicit trade. He so far forgot his horror of a standing army that he asked Congress for an addition to the regular army of six thousand men. Congress had already made an appropriation of $850,000 to build gunboats. It now appropriated a million and a quarter for fortifications and for the equipment of the militia.

Through the long summer of 1808, President Jefferson waited anxiously for the effects of coercion to appear. The reports from abroad were not encouraging. The effects of the embargo upon English economy are even now a matter of conjecture. In the opinion of Mr. Henry Adams, the embargo only fattened the shipowners and squires who devised the orders in council, and lowered the wages and moral standard of the laboring classes by cutting off temporarily the importation of foodstuffs and the raw material for British manufacturers. When Pinkney approached Canning with the proposal that England should revoke her orders upon the withdrawal of the embargo, he was told, with biting sarcasm, that "if it were possible to make any sacrifice for the repeal of the embargo without appearing to deprecate it as a measure of hostility, he [His Majesty] would gladly have facilitated its removal as a measure of inconvenient restriction upon the American people." The blow aimed at Great Britain had missed its mark.

From the first Napoleon had welcomed the embargo as a measure likely to contribute to the success

of his continental system. On April 17, 1808, he issued a decree from Bayonne ordering the seizure of all American vessels in French ports. It was argued ingeniously that since they were abroad in violation of the embargo, they were not *bona fide* American vessels, but presumptively British, and therefore subject to capture. To accept the aid of the French Emperor in enforcing a policy which was intended to coerce his action, was humiliating to the last degree. Armstrong wrote to Madison that in his opinion the coercive force of the embargo had been overrated. "Here it is not felt, and in England . . . it is forgotten."

The importance of the embargo, Jefferson never tired of repeating, was not to be measured in money. If the brutalities of war and the corruption incident to war could be avoided by this alternative, the experiment was well worth trying. Yet Jefferson himself was startled by the deliberate and systematic evasions of the law. "I did not expect," he confessed, "a crop of so sudden and rank growth of fraud and open opposition by force could have grown up in the United States." Moreover, the cost of the embargo was very great. The value of exports fell from $108,000,000 in 1807 to $22,000,000 in the following year. The national revenue from import duties was cut down by one half.

The embargo bore down with crushing weight upon New England, where nearly one third of the ships engaged in the carrying trade were owned. The shipbuilding industry languished, as well as all the industries subsidiary to commerce. Even the farmers

suffered as the embargo continued. A temporary loss of their market could have been borne with some degree of equanimity, but not an indefinite loss, for imported goods now began to rise in price, adding to the general distress.

The economic distress of New England, however, cannot be measured by the volume of indignant protest. The Federalist machine never worked more effectively than when it directed this unrest and diverted it to partisan purposes. Thomas Jefferson's embargo was made to seem a vindictive assault upon New England. The Essex Junto, with Timothy Pickering as leader, spared no pains to convince the unthinking that Jefferson was the tool or the dupe of Napoleon, who was bent upon coercing the United States into war with Great Britain. The spring election of 1808 gave the measure of this reaction in Massachusetts. The Federalists regained control of both houses of the state legislature, and forced the resignation of Senator John Quincy Adams, who had broken with his party by voting for the embargo, and who had incurred the undying enmity of of the Essex Junto by defending the policy of the Administration.

In the midst of what Jefferson called "the general factiousness," following the embargo, occurred a presidential election. Jefferson was not a candidate for reëlection. His fondest hope now was that he might be allowed to retire with honor to the bosom of his family. Upon whom would his mantle fall? Madison was his probable preference; and Madison had the doubtful advantage of a formal nomination

by the regular congressional caucus of the party. But Monroe still considered his chances of election good; and Vice-President George Clinton also announced his candidacy. Both Monroe and Clinton represented those elements of opposition which harassed the closing months of the Administration. Contrary to expectation, the Federalists did not ally themselves with Clinton, but preferred to go down in defeat under their old leaders, Charles C. Pinckney and Rufus King. With the opposition thus divided, Madison scored an easy victory; but against him was the almost solid vote of a section. All the New England States but Vermont cast their electoral votes for the Federalist candidates.

Before the end of the year the failure of the embargo was patent to every fair-minded observer. The alternatives, war or submission, were not pleasant to contemplate. From force of habit the party in power looked to Jefferson for leadership; but since Madison's election, he had assumed the rôle of "unmeddling listener," not wishing to commit his successor to any policy. The abdication of Jefferson thus left the party without a leader and without a program at a most critical moment.

Under the circumstances it was easier to continue the embargo than to face the probability of war. Gallatin had already urged the need of more stringent laws for the enforcement of the embargo, — laws which he admitted were both odious and dangerous. On January 9, 1809, Congress passed the desired legislation. Thereafter coasting vessels were obliged to give bonds to six times the value of ves-

sel and cargo before they were permitted to load. Collectors were authorized to refuse permission if in their opinion there was "an intention to violate the embargo." Only loss at sea released a shipowner from his bond. In suits at law neither capture nor any other accident could be pleaded. Collectors at the ports and on the frontiers were authorized to seize goods which were "apparently on their way toward the territory of a foreign nation." And for such seizures the collectors were not liable in courts of law. The army, the navy, and the militia were put at their disposal.

The "Force Act" was the last straw for the Federalists of Massachusetts. Town after town adopted resolutions which ran through the whole gamut of partisan abuse. The General Court of Massachusetts resolved that it would coöperate with other States in procuring such amendments to the Constitution as were necessary to obtain protection for commerce and to give to the commercial States "their fair and just consideration in the government of the Union." Governor Trumbull, of Connecticut, flatly declined to allow the militia to assist the collectors in the enforcement of the embargo, holding that the act to enforce the embargo was unconstitutional, "interfering with the state sovereignties, and subversive of the guaranteed rights, privileges, and immunities of the citizens of the United States." The legislature rallied to the support of the governor with resolutions which breathe much the same spirit as the Virginia and Kentucky Resolutions of 1798.

The incessant bombardment by the New England

towns was too much for Jefferson's equanimity. "I felt the foundation of the government shaken under my feet by the New England townships," he said in after years. His control over his own party was gone. Northern Republicans combined with Federalists to force the repeal of the embargo through Congress; and on March 1, 1809, with much bitterness of spirit, Jefferson signed the bill that terminated his great experiment. Instead of interdicting commerce altogether, Congress suspended intercourse with France and Great Britain after March 15 and until one or the other of the offenders repealed its obnoxious orders. Meantime, American vessels were free to pick up what trade they could with other nations.

BIBLIOGRAPHICAL NOTE

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CHAPTER XI

THE APPROACH OF WAR

THE Administration of James Madison began with what seemed like a diplomatic triumph. Negotiations with the new British minister, Erskine, led to a complete agreement on all the points in dispute. Full reparation was to be made for the Chesapeake affair. The offensive orders in council of 1807 were to be withdrawn on a fixed date. Thereupon, with undisguised satisfaction, the President issued a proclamation, April 21, 1809, renewing commercial intercourse with Great Britain. General rejoicing followed. Ships which had been tied up to wharves for eighteen months put to sea with crowded holds. Those Republicans who had stanchly upheld the Jeffersonian policy of peaceable coercion boldly claimed for the embargo the credit of having brought about this happy consummation. Some misgivings were excited, to be sure, by the report of a new order in council which substituted a blockade of Holland, France, and Italy for the order of November, 1807; yet weeks of smug satisfaction were enjoyed by the Administration before it was bewildered by the tidings that Canning had recalled Erskine and repudiated all his acts. Madison had to submit to "the mortifying necessity" of issuing another proclamation reviving the Non-Intercourse Act against Great Britain.

Erskine was replaced by Francis James Jackson, a typical representative of the governing class, — intolerant, overbearing, and contemptuous. He had been chosen in 1807 for the brutal destruction of the Danish fleet at Copenhagen. Pinkney described him as "completely attached to all those British principles and doctrines which sometimes give us trouble." Madison was speedily convinced that conciliation was not the keynote of this man's mission. After the first exchange of notes, he took the pen out of the hand of Robert Smith, his incompetent Secretary of State, in order to deal more effectually with the adversary. When Jackson intimated that Erskine had been disavowed for disobedience to instructions and that the Administration was somehow responsible for this misconduct, Madison warned him sharply that "such insinuations are inadmissible in the intercourse of a foreign minister with a government that understands what it owes itself"; and a few days later, after an exhibition of domineering temper on the part of Jackson, Madison informed him that no further communications would be received. Months passed, however, before Jackson was recalled; and in the mean time he made a tour through the Eastern States where he was warmly welcomed by the Federalists. No better evidence was needed to convince the Administration of the unpatriotic and pro-British attitude of Federalist New England.

The Non-Intercourse Act had brought some measure of relief to New England shipping. Trade with parts of the European continent could now be carried

on by those who wished to incur the hazard. A greater volume of trade was probably carried on illicitly with England. Amelia Island, just across the Florida line, and Halifax, in Nova Scotia, became intermediate ports to which American goods went for reshipment to Europe and to which British merchandise was shipped for distribution in the United States. Notwithstanding these well-known evasions of the law, Congress would probably have been content to leave well enough alone but for the fact that the Non-Intercourse Act would expire by limitation in the spring of 1810. Some action was imperative. A bill was drawn by the Administration to meet the situation and introduced in the House by Macon; but it failed to command the support of the party and was dropped in favor of a second bill, commonly known as Macon's Bill No. 2, though he was not the author of it. This measure eventually became law, May 1, 1810. "It marked the last stage toward the admitted failure of commercial restrictions as a substitute for war," writes Mr. Adams. By repealing the Non-Intercourse Act it left commerce free once more to seek the markets of the world. In case either Great Britain or France should revoke or modify its hostile policy, the President was authorized to revive the Non-Intercourse Act against the delinquent nation.

After the Non-Intercourse Act of 1809, Napoleon had begun the "sequestration" of American vessels in European ports. Sequestration proved to be only a euphemistic expression for confiscation. On May 14, he issued from Rambouillet a decree which authorized the seizure and condemnation of all American

ships in French ports. With an eye to the needs of his war chest, the Emperor calculated that by drawing in this net he would make a catch amounting to about six million dollars. As a matter of fact, this was a conservative estimate. The American consul at Paris reported the seizure of one hundred and thirty-four vessels between April, 1809, and April, 1810. The actual loss to American shipowners could not have been less than ten millions of dollars.

The news of the passage of Macon's bill suggested another stroke to the wily conqueror of Europe. On August 5, he announced to the American Minister that the decrees of Berlin and Milan were revoked and would be inoperative after November 1, "it being understood that in consequence of this declaration the English are to revoke their orders in council and renounce the new principles of blockade," and that the United States, conforming to its act of May 1, 1810, would "cause their rights to be respected by the English."

Accepting this letter at its face value, with a credulity which now seems incredible, President Madison proclaimed on November 2 that France had withdrawn its decrees, and that in consequence commercial intercourse with Great Britain would be suspended on and after February 2, 1811. Madison's haste was due to a very natural desire to coerce Great Britain into a similar renunciation, but to his chagrin, the British Ministry refused to accept the mere notification of Napoleon as evidence of the repeal of the various decrees. Even the supporters of the Administration became uneasy as months passed

without any formal edict of revocation. Might not the courts adjudge that the decrees had not been repealed *pro forma?* The Administration was greatly perturbed in December, too, by the news that two American vessels had been sequestered at Bordeaux. After much hesitation, Congress came to the support of the President and revived the Non-Intercourse Act against Great Britain, at the same time admitting the weakness of its position by the additional provision that the courts should not entertain the question whether the French decrees were or were not revoked. On the same day, February 28, 1811, Pinkney took formal leave of the Prince Regent under circumstances which presaged, if they did not imply, a rupture of diplomatic relations. Yet the British Ministry had so little comprehension of the temper of the American people that at this very moment Wellesley was drafting instructions for the new Minister, Mr. Augustus John Foster, which bade him yield not a jot or a tittle to the alleged rights of neutrals. He was, however, to make proper reparation for the Chesapeake affair.

In these months of struggle for the rights of neutral commerce, the question of impressments had been relegated to second place in the minds of Americans. The blockade of New York by British frigates in the spring of 1811 suddenly revived the old controversy. For a year past an American squadron under the command of Commodore John Rodgers had patrolled the coast, under instructions to protect all merchantmen from molestation by armed foreign cruisers within the three-mile limit.

The British frigate Guerrière had made itself particularly offensive by its search crews and arbitrary seizures of alleged deserters. On May 16, 1811, Commodore Rodgers's flagship, the frigate President carrying forty-four guns, sighted a British sloop-of-war some fifty miles east of Cape Henry, which he believed to be the Guerrière, and wishing to make inquiries about a certain seaman who was reported to have been impressed, Rodgers sailed toward the stranger. The vessel acted in a manner which was thought suspicious, so the President gave chase. On coming within range about dusk, the American frigate was fired upon, so it was alleged in a subsequent court of inquiry. The President then opened its batteries and in less than fifteen minutes had overpowered the British corvette. To his surprise and disappointment, Rodgers then learned that his antagonist was not the Guerrière, but the Little Belt, a vessel far inferior to his own and carrying only twenty guns. When the new British Minister arrived in Washington, he found the Administration singularly indifferent to the historic Chesapeake affair. In the opinion of the American public, the President had avenged the Chesapeake.

While Congress was vacillating between non-intercourse and partial non-intercourse, in the early months of 1810, with a strong inclination toward the path of least resistance, one voice was raised for war. Henry Clay was then filling out an unexpired term in the Senate upon appointment by the Governor of Kentucky. Born in Virginia, thirty-three years before, he had sought his fortune as a young

lawyer in the new communities beyond the Alleghanies. Closely identified with the aggressive spirit of his section, he voiced a growing sense of humiliation that his country should be buffeted by every British ministry. The people of Kentucky and Tennessee had little patience with half measures in defense of national rights. The petty diplomacy of closet statesmen did not appeal to the soul of the frontiersman who was accustomed to hew his way to his goal. The people of this section, imperial in its dimensions, were prepared for large tasks done in a bold way. Their ideas of the Union transcended the policies of Eastern statesmen, whose eyes saw no farther than the tops of the Alleghanies and whose ears listened all too readily to the admonitions of European chancellors. Clay spoke heatedly of the "ignominious surrender of our rights" — heritage of the heroes of the Revolution. He would have Congress exhibit the vigor of their forbears. "The conquest of Canada is in your power," he cried. "I trust I shall not be deemed presumptuous when I state that I verily believe that the militia of Kentucky alone are competent to place Montreal and Upper Canada at your feet." This was a new and unfamiliar style of oratory in the Senate of the United States.

At this moment, however, the United States seemed far more likely to acquire the Floridas than Canada. In the summer of 1810, Americans who had crossed the border and settled in and around the district of West Feliciana rose in revolt against the Spanish governor at Baton Rouge, and declared West Florida a free and independent state, appealing to the Su-

preme Ruler of the world for the rectitude of their intentions. What their intentions were appeared in a petition to the President for annexation to the United States. This was an opportune moment for the realization of the hopes which Madison had cherished ever since the acquisition of Louisiana. On October 27, 1810, he issued a proclamation, announcing that Governor Claiborne would take possession of West Florida to the river Perdido, in the name of the United States.

Not satisfied with this achievement, President Madison called attention in a secret message to the condition of East Florida and asked Congress for authority to take temporary possession of any part or parts of the territory. With equal secrecy Congress gave the desired authorization, and the President immediately sent two commissioners with large discretionary powers to the St. Mary's River. In March, 1812, another "revolution" took place. The Spanish governor of East Florida was forced to surrender and to permit the occupation of Amelia Island in the name of the United States. The farce was too broad, however, even for the eager Administration. The President was obliged to disavow the acts of his agents. But Amelia Island was not evacuated until May, 1813, and West Florida was never released. After much deliberation Congress annexed part of the region to the new State of Louisiana and joined the rest to the Territory of Mississippi.

In the Northwest also American pioneers were overrunning the bounds, not those fixed by international agreement, to be sure, but those marked by

Indian treaties, which commanded even less respect. A society which believed that the only good Indian was a dead Indian was not likely to be over-nice in its appraisal of his property rights. The line of intercourse marked by the Treaty of Greenville in 1795 had receded somewhat as home-seekers had pushed their way up the rivers from the Ohio into the Indiana Territory; but the vast interior around the upper waters of the Wabash River was still closed to white men. Governor William Henry Harrison fully shared the irritation of the settlers that Indians should monopolize the best lands. He was therefore a willing agent of the President when in 1804 and 1805 he took advantage of the necessities of certain chieftains, whom he called "the most depraved wretches on earth," to despoil whole tribes of their lands, under the guise of treaties.

Among the better class of Indians this policy aroused the bitterest resentment. The rise of Tecumseh, son of a Shawnee warrior, and of his brother the Prophet, dates from this time. It was the aim of these remarkable individuals to prevent the further alienation of Indian lands by limiting the authority of irresponsible local chiefs and conferring it upon a congress of warriors from all allied tribes. During the year 1808, Tecumseh and the Prophet laid the foundation of a confederacy by establishing an Indian village on Tippecanoe Creek, one hundred and fifty miles above Vincennes.

In the following year (1809), Governor Harrison anticipated the formation of this Indian confederation by beginning negotiations with the same irre-

sponsible sachems for the cession of more lands. The treaty, which was readily concluded, carried despair to the heart of every follower of Tecumseh, for it conveyed to the National Government three millions of acres of the best lands in the Indian country, extending along both banks of the Wabash for a hundred miles. An alliance with the British seemed to be the only recourse of the Indians. Only a spark was needed to start a conflagration along the whole frontier.

Although war was believed to be imminent by the people of Indiana, the winter and summer of 1811 passed without untoward events. Toward the end of October, Harrison began a forward movement into the Indian country. On the morning of November 7, his camp on the banks of the Tippecanoe was attacked. A sharp engagement followed, in which the army narrowly escaped disaster; but the troops rallied and finally succeeded in routing the Indians. In the abandoned village of the Prophet were found English arms — confirmatory evidence, it was said, of the part which the British in Canada had taken in the projects of Tecumseh and the Prophet. Occurring at a moment of tension between the United States and Great Britain, the battle of Tippecanoe may be regarded properly as "a premature outbreak of the great wars of 1812." An unforeseen consequence of this skirmish on the frontier was the rise of a new popular hero in the West.

Nationally minded men indulged high hopes of the new Congress which convened at the capital in November, 1811. The presence of some seventy new

members, many of whom belonged to a younger generation, warranted the expectation that the Twelfth Congress would exhibit greater vigor than its predecessor. In organizing, the House passed over Macon, who belonged to the old school of statesmen, and chose as Speaker Henry Clay, who had exchanged his seat in the Senate for this more stirring arena. Clay's conception of the Speakership was novel. He was determined to be something more than a mere presiding officer. As a leader of his party he proposed to use his powers of office to shape legislation. His heart was set upon an aggressive policy. War had no terrors for him. He therefore named his committees with the possibility of war in mind.

There were many young men who shared Clay's impatience with the policy of peaceable coercion and its humiliating sequel. Grundy, of Tennessee, had been elected because he openly favored war. He admitted that he was "anxious not only to add the Floridas to the south, but the Canadas to the north of this Empire." John C. Calhoun, a new member from South Carolina, openly repudiated the restrictive system of the President as a mode of resistance suited neither to the genius of the people nor to the geographical character of the country. "We have had a peace like a war," he cried; "in the name of Heaven let us not have the only thing that is worse — a war like a peace!" Clay left the chair frequently to stir the House by his glowing eloquence. Whatever else might be said about these young stalwarts, no one could doubt their ardent nationalism and devotion to the Union. Even the President was

moved to allude gently in his annual message to the duty of assuming "an attitude demanded by the crisis and corresponding with the national spirit and expectations."

The response of Congress was exasperatingly slow. It was January before a bill to increase the standing army by twenty-five thousand men became law. Another month passed before Congress would agree to a bill authorizing the President to raise a volunteer force of fifty thousand men. No arguments would move the House to vote an appropriation of seven and a half million dollars for a navy of twenty frigates and twelve ships-of-the-line. Even more discouraging was the reluctance of Congress to anticipate the financial drain of war by levying the internal revenue taxes which Gallatin strongly recommended, now that Congress had suffered the charter of the National Bank to expire. Without that important instrument of credit, he saw no alternative but to revive the excise which was so hateful to Republicans. In the end Congress authorized a loan of eleven million dollars, but no additional taxes.

From the first the war party had fixed upon Great Britain as the object of attack. In the sober light of history, France appears to be quite as much an enemy to American commerce. But so long as the Administration maintained that Napoleon had withdrawn his decrees, and that England had not, consistency required that Great Britain should be regarded as the greater offender. Reparation had been made for the Chesapeake affair, to be sure, but no guaranties had been given that the rights of

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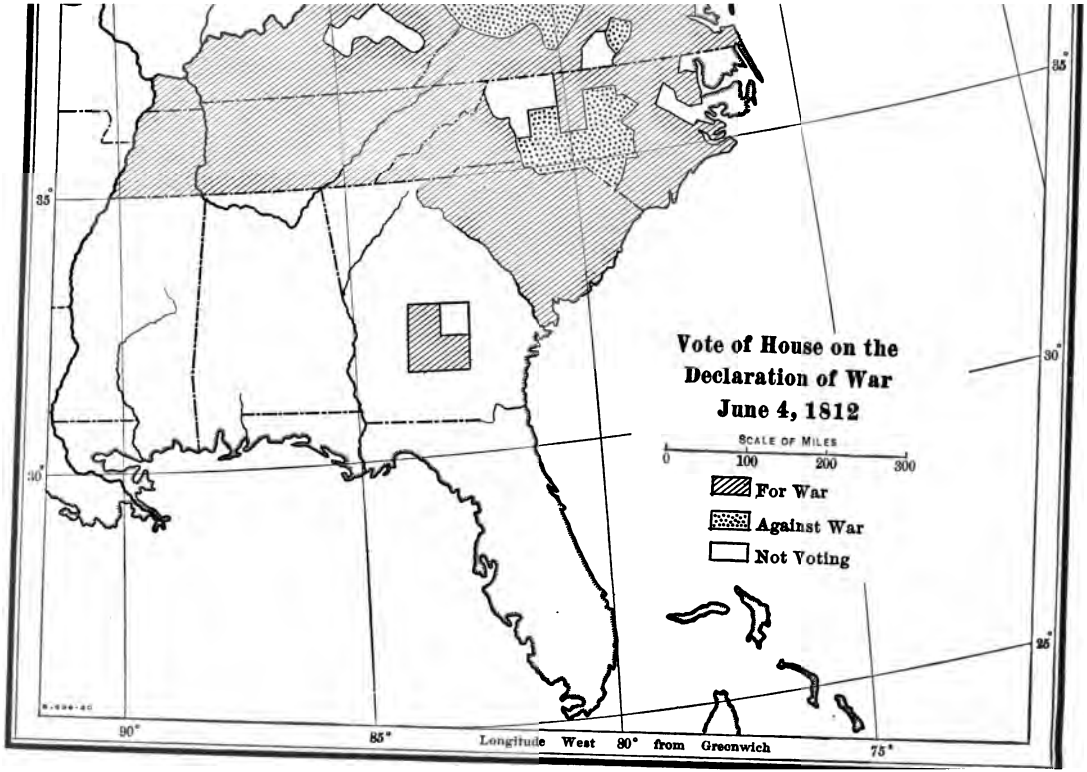
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Declaration of War
June 4, 1812
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Longitude West from Greenwich

neutral vessels would be respected on the high seas. Besides, the group of young Republicans led by Clay and Grundy had looked forward to the conquest of Canada on the north and of Florida on the south as the result of war. Madison was too keen a politician not to know that he could not afford to alienate this group if he wished a second term in office. On April 1, he recommended an embargo for sixty days, and two months later, on June 1, he sent his famous war message to Congress.

In reciting the grievances of the United States, the President thrust into the foreground "the continued practice of violating the American flag on the great highway of nations, and of seizing and carrying off persons sailing under it." No one could deny that these were real grievances, but they had not been pressed in recent negotiations as a possible cause of war. A second grievance was the blockade of American ports by British cruisers. "They hover over and harass our entering and departing commerce," said the President. "To the most insulting pretentions they have added the most lawless proceedings in our very harbors; and have wantonly spilt American blood within the sanctuary of our territorial jurisdiction." This grievance was also real, but not of recent date. When the President alluded to "pretended blockades" under which "our commerce has been plundered in every sea," he touched upon outrages which were still fresh in the minds of all. "Not content with these occasional expedients for laying waste our neutral trade," continued the message, "the Cabinet of Great Britain resorted, at

length, to the sweeping system of blockades, under the name of Orders in Council." Finally, the President did not refrain from the plain intimation that the Indian hostilities on the frontier were due to the influence of British traders and British garrisons.

Three days later the House of Representatives passed a bill declaring war by a vote of 79 to 49. The opposition came largely from the Northeast. The representatives from Connecticut and Rhode Island were to a man against war, and they were supported by Federalists from Massachusetts, New York, New Jersey, Maryland, and Delaware. In the Senate the vote stood 19 for war and 13 against it. "Except Pennsylvania, the entire representation of no Northern State declared itself for the war; except Kentucky, every State south of the Potomac and Ohio voted for the declaration."

While Congress was debating the alternatives of peace or war, the British Government took a step which under modern conditions would have averted hostilities. Taking advantage of a decree of Napoleon dating from 1810, which declared his edicts revoked so far as American vessels were concerned, the Ministry announced on June 23 that the British orders would be withdrawn. But just five days earlier, President Madison had proclaimed a state of war between the United States and Great Britain.

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CHAPTER XII

THE WAR OF 1812

When hostilities began in North America, the war establishment of the United States stood officially at 36,700 men. Actually the army consisted of ten regiments with ranks half filled, scattered in garrisons from Mackinac to Lake Champlain, — a force of less than 10,000 men, of whom 4000 were raw recruits. The staff was made up of old and incompetent officers; and from a military point of view the new appointments left much to be desired. The navy which was to contest the supremacy of the seas with the victor at Trafalgar consisted of twelve sea-going vessels and some two hundred gunboats, which were useless except for coast defense. There was bitter truth in the manifesto issued by the Federalist members of Congress when it said: "Our enemy is the greatest maritime power that has ever been on earth, and to her we offer the most tempting prizes. Our merchantmen are on every sea. Our rich cities lie along the Atlantic seaboard close to the water's edge. And to defend these from the cruisers of Great Britain we are to have an army of raw recruits yet to be raised and a navy of gunboats now stranded on the beaches and frigates that have long been rotting in the slime of the Potomac."

The worst aspect of the war was its sectional character. New England was in opposition. From

the outset the activity of the National Administration was weakened by the indubitable fact that the United States, as the Federalists were never tired of repeating, began the war "as a divided people." When General Dearborn made requisition upon the governors of Massachusetts and Connecticut for militia to defend the coast, Governor Strong ignored the summons. Pressed for a reply, he finally stated to the Secretary of War that the judges of the Supreme Court of Massachusetts had advised him that the commanders-in-chief of the militia in the several States, rather than the President, had the right to determine whether any of the exigencies contemplated by the Constitution existed so as to require them to place the militia in the service of the United States. The judges also advised the governor that the militia, when in the service of the United States, could not lawfully be commanded by any federal officers below the President, but only by state officers. The general assembly of Connecticut sustained Governor Griswold in a similar attitude toward the federal authorities, holding that the war was an offensive war to which the provisions of the Constitution respecting the militia did not apply.

From the first the war-hawks had cried, "On to Canada," for their hope of conquest was undisguised. "Agrarian cupidity," declared Randolph, "not maritime right, urges the war. Ever since the report of the Committee on Foreign Relations came into the House, we have heard but one word, — like the whippoorwill, but one eternal monotonous tone, — Canada, Canada, Canada!" Military considerations, how-

ever, probably determined the campaign of 1812, — so far, indeed, as any well-considered plans were worked out. A general advance was to be made along the route by Lake Champlain to Montreal. Three expeditions were also to be sent against Sackett's Harbor, Niagara, and Malden. All were strategic points on the Lakes; but Malden was particularly important as the center of British influence among the Indians of the Northwest.

The expedition against Malden, which was entrusted to General William Hull, not only failed to accomplish its purpose, but terminated in the most humiliating reverse of the war. For reasons that have never been adequately explained, Hull laid siege to Malden instead of attacking it at once with his superior force; and when British reënforcements appeared, he not only abandoned the siege, but on August 15, surrendered Fort Detroit without firing a shot. The army, the fort, and the undisputed control of the Michigan country passed into the hands of the British. On the same day occurred the surrender of Fort Dearborn and the massacre of its garrison by the Indians.

The other military operations on the northern frontier were scarcely less inglorious. The failure of the attack upon Queenston, October 13, was due largely to the incompetence of the commanding general. Nowhere did the American troops pierce the Niagara or Lake Champlain frontier. The Duke of Wellington was well within the truth when he declared the American campaign of 1812 "beneath criticism."

The smart of these humiliating failures was only relieved by the series of stirring naval victories which began with the duel between the Constitution and the Guerrière. The frigates met on August 19, some three hundred miles off Cape Race. "In less than thirty minutes from the time we got alongside of the enemy," reported Captain Hull of the Constitution, "she was left without a spar standing, and the hull cut to pieces in such a manner as to make it difficult to keep her above water." The effect of this victory was electric. When the Constitution reached Boston Harbor, even Federalists broke into exultation. The cry in every New England home was, "Thank God for Hull's victory!" Nothing could have been better timed and more dramatic. The papers which announced the humiliating surrender of General Hull contained the news of his nephew's victory.

If the victory of the Constitution was won on unequal terms, — the Guerrière was undoubtedly inferior, — the British Admiralty could not excuse a second naval defeat on this score. On October 17, the American sloop-of-war Wasp encountered the brig Frolic convoying merchantmen six hundred miles east of Norfolk. There was little to choose between the vessels either in size or equipment, yet the marksmanship of the American gunners was so far superior that in forty-three minutes the crew of the Wasp had boarded the Frolic. Not even the subsequent capture of both vessels by a British ship-of-the-line could dim the glory of this victory. A week later the frigate United States under Captain Decatur captured the Macedonian and brought her into New

London — "the only British frigate ever brought as a prize into an American port." In December the Constitution, now commanded by Captain Bainbridge, added to her laurels by overpowering the powerful frigate Java.

The effect of these disasters upon the British public was out of all proportion to the actual value of the vessels lost. Canning afterward declared that the loss of the Guerrière and the Macedonian produced a sensation scarcely to be equaled by the most violent convulsion of nature. "The sacred spell of the invincibility of the British navy was broken by those unfortunate captures."

In the midst of the war occurred a presidential election. Madison had been the unanimous choice of the congressional caucus held in May; but only eighty-three out of one hundred and thirty-three Republicans had attended, and the discontent of New York Republicans was well known. The nomination of De Witt Clinton by the New York legislative caucus opened wide the breach in the party. In September a convention of Federalists repeated the error of 1804 and indorsed Clinton's nomination, naming as his partner Jared Ingersoll, of Pennsylvania. Elbridge Gerry, of Massachusetts, was finally nominated for Vice-President by the Republicans. The alternatives presented to the people seemed to be Madison and continued war ineffectively conducted, or Clinton and still more humiliating peace. New York, New Jersey, Delaware, and all the New England States but Vermont, preferred Clinton. The South and West supported Madison; but without the

vote of Pennsylvania Madison would have been defeated.

To retrieve Hull's disaster, General William Henry Harrison, the hero of Tippecanoe, was placed in command of the Western army in the fall of 1812; but a succession of mishaps overtook his expedition into the Northwest. He not only failed to reach Detroit, but lost most of his available troops by disease, desertion, and the onset of British detachments from Fort Malden.

It was now clear that the control of the Lakes was indispensable for a successful invasion of Canada. At the close of the year 1812, there was not a war-vessel flying the American flag on Lake Erie. To create a fleet was the task set for Oliver Hazard Perry, a young naval officer, who was sent from Newport to Presqu' Isle. Of the needful supplies only timber was abundant; the rest had to be brought overland from Philadelphia by way of Pittsburg. Surmounting all obstacles, nevertheless, the energetic Perry finally got together a flotilla of vessels which was quite equal to the British squadron. The two fleets met in battle off Sandusky on September 10, 1813. The American boat Lawrence, Perry's flagship, was obliged to strike her colors, but Perry boarded another vessel of his fleet and succeeded in turning defeat into a brilliant victory. "We have met the enemy and they are ours," was his triumphant dispatch to General Harrison.

The way was now open to the invasion of Canada. Under the protection of Perry's fleet, Harrison was able to transport his army to the Canadian shore

below Fort Malden. The British troops were already in full retreat. On October 5, 1813, the American army overtook them and in a short but decisive battle on the river Thames revenged the loss of Detroit. Among the dead on the British side was found the body of Tecumseh. In point of numbers, the battle of the Thames is insignificant; but it has an important place in the annals of the war because it destroyed the British military power in the Northwest and recovered control of the Michigan Territory.

No such success attended the movement of American troops on the Niagara and St. Lawrence frontier. The control of Lake Ontario was in doubt throughout the year 1813. The military operations, first under Dearborn, and then under Wilkinson and Hampton, were indecisive. Indeed, the events of the year served only one good purpose: they revealed the incompetence of the older generals and the ability of the younger officers.

The loss of the Chesapeake in a duel with the Shannon, on June 1, 1813, outside of Boston Harbor, left the United States with an available sea-going navy of just two frigates and a few small sloops. All the other frigates were shut up in various ports by the British blockade, which extended from Cape Cod to Florida. The burden of offense during the rest of the war fell upon privateers. During the war more than five hundred fitted out in American ports. In the year 1813 they took over three hundred prizes, while the frigates took but seventy-nine. While British cruisers were blockading the coast of the United States, these craft, with their beautiful

lines and wonderful spread of canvas, carried consternation to all British shippers in the English Channel and in the Irish Sea. They "seize prizes in sight of those that should afford protection," complained the London *Times*, "and if pursued put on their sea-wings and laugh at the clumsy English pursuers." No exploits of the regular navy contributed so much to dispose the British governing class to peace as the depredations of these privateers.

In the remote Southwest, the war assumed a different character. There the enemy on the border was not Great Britain but Spain. The people of the Carolinas and Georgia fully expected to acquire the Floridas while the North was wresting Canada from British control. Had President Madison been given his way, this wish would have been gratified; but Congress refused to countenance the seizure of East Florida, and in May, 1813, Madison very reluctantly ordered the troops to evacuate Amelia Island. No scruples deterred Congress from authorizing the occupation of West Florida. In the spring of 1813, General Wilkinson forced the surrender of the only Spanish fort on Mobile Bay and took possession of the country as far as the Perdido — "the only permanent gain of territory made during the war."

During the first year of the war the younger warriors of the Western Creeks, in what is now Alabama, had been incited to hostilities by Tecumseh, and in the following spring began depredations which culminated in the capture of Fort Mims and the massacre of its inhabitants on August 30, 1813. The horrors of an Indian war brought every able-

bodied settler in the adjoining States to arms. Before the end of the year seven thousand whites had invaded the Indian territory and had killed about one fifth of the Creek warriors. The hero of the war was General Andrew Jackson, who at the head of an army of Tennessee militiamen won a decisive battle at Horseshoe Bend on the Tallapoosa River. On August 9, 1814, he forced the chieftains who had not fled across the Florida border to sign a treaty of capitulation at Fort Jackson and to cede nearly two thirds of their lands in southern Georgia and in what afterward became central Alabama. This phase of the war opened up a vast territory to settlement and made the military reputation of Andrew Jackson.

Operations on the Niagara frontier were resumed by the American troops in 1814; but they were now directed by one of the new major-generals, Jacob Brown, who infused a new spirit into his soldiers. On July 5, General Winfield Scott's brigade won a signal victory at Chippewa. Three weeks later, on July 25, the entire army fought a desperate battle at Lundy's Lane, which lasted from sunset to midnight. The Americans claimed a victory, but the losses were about even and the British remained in possession of the field. At the close of the year, despite the valiant fighting of Brown's army, the situation on the Niagara had not changed materially. The invasion of Canada and a peace dictated from Quebec seemed as remote as ever.

The British plans for the campaign of 1814 called for "a diversion on the coasts of the United States, in favor of the army employed in the defense of

Upper and Lower Canada." For the first time since the opening of hostilities, British military authorities could concentrate their attention on the war in North America. The defeat of Napoleon on the plains of Leipzig had thrown his shattered columns back upon France. Thither the allied armies had followed him and forced his capitulation. With the end of European wars in sight, Wellington could release his veteran troops for service in America. In early summer eleven thousand seasoned troops were sent to Canada. Four thousand more were dispatched under Major-General Ross, of the Peninsular army, to coöperate with the navy under Admiral Cochrane on the shores of Chesapeake Bay. Later in the year Major-General Pakenham, also a veteran of the Peninsular campaign, was sent with ten thousand troops to seize the mouth of the Mississippi and to force the capitulation of the West by closing the ports on the Gulf.

Those whose memories went back thirty-seven years may well have recalled Burgoyne's expedition, for it was by the old Lake Champlain route that Sir George Prevost began his invasion of New York in September, 1814. His objective was Plattsburg, where an American army of not more than two thousand men was stationed. Accompanying his army, to insure its line of communication with Canada, was a fleet consisting of a frigate, a brig, and a dozen smaller vessels. To this fleet, Captain Thomas Macdonough could oppose only a corvette and a dozen small craft. The fleets met in a battle for the control of the lake on September 11. The resource-

fulness of the young American officer saved the day. By winding his corvette, the Saratoga, about, so as to bring her unused guns to bear just when the fight seemed lost, he forced the formidable Confiance to strike her colors. The surrender of the smaller British boats followed. The battle of Plattsburg was decisive of the invasion. Fearing greater disasters if he pressed on without the control of the waterway at his rear, Prevost at once ordered a retreat.

The expedition directed toward Chesapeake Bay was well under way before Prevost's ill-starred invasion began. On August 19, General Ross landed his forces on the banks of Patuxent River, within striking distance of Washington. Marching leisurely across country toward the capital, the British finally met at Bladensburg a motley array of some seven thousand Americans, hastily summoned from the countryside. What followed is not easily described. Some show of resistance was made by the marines from the American gunboats in the Patuxent; but for the most part the Americans were seized with a panic and fled in wild disorder. The President and his Cabinet took to the Virginia woods, leaving the enemy to wreak their vengeance on the government buildings. Having fired the Capitol, the White House, and other edifices, the British forces returned to their fleet and reëmbarked. The historian can take no pleasure in dwelling upon details which are discreditable to all concerned; for if the British committed acts of vandalism, the Americans had provoked retaliation when they burned the parliament houses at York in the campaign of 1813.

An attack upon Baltimore which might have resulted in further outrages was frustrated by the measures of defense which the government of the city had already wisely undertaken. After a skirmish in which General Ross was killed, and an ineffective bombardment of the harbor defenses, the British withdrew.

A visitor to the national capital after its capture described the President as "miserably shattered and woe-begone," and heart-broken at the defection of New England. To prosecute the war, money and men were needed; but both were wanting. The Administration hoped, but hoped in vain, that the victories at Chippewa, Lundy's Lane, and Plattsburg would stimulate enlistments; but recruits were not likely to be lured by promises which every one knew the Government could not redeem. It became clearer every day that unless Congress was disposed to adopt Monroe's plan of conscription, the National Government would have to put its dependence upon state armies. In September, after Castine and the eastern part of Maine to the Penobscot had been occupied by the British, Governor Strong consented to call out the militia of Massachusetts, but he was careful to place the troops under the command of state officers. At the same time he made inquiry of the Secretary of War whether the expenses of the militia would be assumed by the National Government. Monroe replied rather sharply that so long as Massachusetts refused to put her troops under the command of national officers, she need not expect the United States to maintain them. The Governor of

Connecticut had already withdrawn the militia of that State from national service. At the moment when Prevost was beginning his invasion, the Governor of Vermont declined to call out the state militia because he doubted his authority to order the militia out of the State. The Union seemed on the point of disintegrating into its original elements.

The anxieties of the Administration were further increased by the action of the Massachusetts General Court, which called a convention of those States "the affinity of whose interests is closest," with the avowed purpose of devising some mode of common defense and of securing a convention of delegates from all the States to revise the National Constitution. In spite of vigorous opposition, delegates were chosen, to meet on December 15 with "such as may be chosen by any or all of the other New England States." The legislatures of Connecticut and Rhode Island responded promptly; but the legislature of Vermont unanimously declined the invitation, and New Hampshire failed to reply. The movement seemed all the more ominous after the fall elections, which resulted in the choice of thirty-nine Federalist Congressmen from New England and of only two Republicans. In the preceding Congress there had been thirty Federalists and eleven Republicans.

That members of the Essex Junto would gladly have seized this opportunity to remake the Federal Union by excluding the Western States appears clearly enough in the correspondence of men like Timothy Pickering. A new Union of the "good old thirteen States" on terms set by New England was

believed to be well within the bounds of possibility. Radical newspapers referred with enthusiasm to the erection of a new federal edifice. Little wonder that the harassed President was obsessed with the idea that New England was on the verge of secession.

From the first, however, this movement in New England was kept well in hand by men like Harrison Gray Otis, who always insisted that the object of a convention was to defend New England against the common enemy and to prevent radical action under the stress of popular excitement. If this be true, it was unfortunate, to say the least, that these patriots chose just this moment, when the Federal Government was about to succumb to the common enemy, to propose alterations in the Constitution; and it was equally unfortunate for the reputations of all concerned that they should have held their deliberations in secret, giving an air of conspiracy to their proceedings. The official journal of the Convention at Hartford was not published until 1823. When the Convention adjourned on January 5, 1815, all that the general public was permitted to know of its deliberations was contained in its famous report.

The Convention was at no little pains to reassure a waiting world that it did not contemplate or countenance secession. It was not yet ready to concede that the defects in the Constitution were incurable nor that multiplied abuses justified a severance of the Union, "especially in a time of war." "If the Union be destined to dissolution, . . . it should, if possible, be the work of peaceable times, and delib-

erate consent." But these philosophical considerations did not deter the author of the report from a vicious and partisan attack upon "the multiplied abuses of bad administrations."

President Madison must have read this document with mingled feelings, for the Convention held, almost in the words of his Resolutions of 1798, that the infractions of the Constitution were so "deliberate, dangerous, and palpable" as to put the liberties of the people in jeopardy and to make it the duty of a State "to interpose its authority for their protection." The legislatures of the several States were recommended to adopt measures for protecting their citizens against all unconstitutional acts of Congress which should subject the militia or other citizens to forcible drafts, conscriptions, or impressments. They were also urged to apply to the Federal Government for consent to some arrangement whereby the States, separately or in concert, could undertake their own defense and retain a reasonable proportion of the national taxes for the purpose. Finally, seven amendments to the Constitution were proposed, to prevent a recurrence of the grievances from which the New England States suffered. Four of these proposed amendments put limitations upon Congress: a two-thirds vote of both houses was to be required to admit a new State, to interdict commerce, to lay an embargo, and to declare war. In future, representation and direct taxes were to be apportioned according to the respective numbers of free persons. Naturalized citizens were to be excluded from all federal civil offices; and finally — a blow at the Virginia

dynasty — "the same person shall not be elected President of the United States a second time; nor shall the President be elected from the same State two terms in succession."

The General Court of Massachusetts acted promptly. Three commissioners were dispatched at once to Washington, to work out an amicable arrangement for the defense of the State. On February 3, 1815, the "three ambassadors," as they styled themselves, set out for the capital. Ten days later, *en route*, they learned that General Andrew Jackson had decisively repulsed an attack of the British upon New Orleans on January 8. On reaching Washington the commissioners were met with the news that a treaty of peace had been signed at Ghent. Their cause had met with the most unlucky fate which can befall any cause in the United States: it had become ridiculous. The tension of war-times relaxed in a roar of laughter at their expense.

Early in the year 1813, Russia had endeavored to mediate between her ally and the United States. President Madison had at once, and as it appeared somewhat precipitately, sent Albert Gallatin and James A. Bayard as peace commissioners to St. Petersburg; but Great Britain declined the Czar's good offices. The American envoys, however, remained in Europe. When, then, in October, the British Ministry intimated that it was prepared to begin direct negotiations, President Madison created a new commission by sending John Quincy Adams, Henry Clay, and Jonathan Russell to join Gallatin and Bayard. In the last week in June, the commis-

sioners repaired to Ghent, which had been chosen as the place of meeting. Thither the British negotiators followed them in leisurely fashion. The first joint conference was not held until August 8, 1814.

The task of the American commissioners was one of very great difficulty. Confronted by the unexpected demand that the revision of the Canadian boundary, the fisheries, and the establishment of an Indian state in the Northwest should be included in the *pourparler*, they could only reply that they had been instructed to discuss only matters of maritime law — impressments, blockades, and neutral rights. There seemed so little likelihood of agreement that the American commissioners prepared to leave Ghent. But the British Ministry abated its extreme demands and continued the negotiations. At the same time new instructions from Washington advised the American representatives that they might drop the subject of impressments if they found it an insuperable obstacle in the way of peace.

The insistence of the British agents upon the principle of *uti possidetis* — the state of possession at the close of the war — again threatened to break off negotiations, for the Americans resolutely insisted on the *status quo ante bellum*, a restoration of all places taken during the war. It was at this juncture that tidings arrived of the British repulse at Plattsburg. For a week the British Ministry debated the feasibility of renewing the war; but the complications at the Congress of Vienna, the "prodigious expense" of continued war, the change in public opinion, and the emphatic conviction of Wellington that the Min-

istry had "no right from the state of the war to demand any cession of territory" — these and many lesser considerations disposed the Cabinet to ask the American envoys to prepare a draft of a treaty.

Strong differences of opinion developed among the Americans when they set to work upon their preliminary draft. As the representative of Western interests, Clay set himself obstinately against any further recognition of the British right — secured by the treaty of 1783 — of free navigation of the Mississippi. Adams was equally determined not to sacrifice the correlative right to the Labrador and Newfoundland fisheries, which his father had secured in the Treaty of Paris. Gallatin, the peacemaker, was in favor of offering to renew both privileges; and he finally succeeded in winning Clay's reluctant assent to this plan. But when the British commissioners objected, both sides agreed to omit all reference to these vexing questions.

The treaty which was signed on December 24, 1814, is remarkable for its omissions. The reader will scan it in vain for any allusion to impressments, blockades, and neutral rights. It is equally silent as to the control of the Lakes, Indian territories, the fisheries, and the navigation of the Mississippi. It was "simply a cessation of hostilities, leaving every claim on either side open for future settlement." Clay probably reflected the disappointment of Republicans when he pronounced it "a damned bad treaty." Nevertheless, it brought what was most desired by the exhausted Administration — peace. Moreover, the treaty must be viewed in the light of

events in Europe. The overthrow of the Napoleonic Empire and the exile of Bonaparte gave promise of a return to normal conditions so far as maritime rights were concerned. The victories of American seamen in the war were after all better guaranties of neutral rights than any declarations on parchment.

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CHAPTER XIII

THE RESULTS OF THE WAR

In a message to Congress transmitting the treaty of peace, President Madison congratulated the country on the termination of a war "waged with a success which is the natural result of the wisdom of the legislative councils, of the patriotism of the people, of the public spirit of the militia, and of the valor of the military and naval forces of the country." The verdict of history does not sustain this pæan of victory. "The record, upon the whole," declares Admiral Mahan, "is one of gloom, disaster, and governmental incompetence, resulting from lack of national preparation, due to the obstinate and blind prepossessions of the Government, and, in part, of the people." Public opinion indorsed the President's estimate of the late struggle.

As a matter of fact, the people of the United States had seen little of the disasters and ravages of war. All the important battles took place on the borders. The great mass of the people were undisturbed in their vocations. There was hardly a day during the war when a farmer could not till his acres in tranquillity. Not an important city save Washington was taken during the war. Nor was the loss of life large in proportion to population. All told, the killed and wounded did not exceed five thousand men. Napoleon lost nearly two hundred

thousand French soldiers in his disastrous Russian campaign.

American character appeared at its best and at its worst in these three years of war. Even the British press could not gainsay the resourcefulness and intelligence of the American soldier and sailor, though the phrase "Yankee smartness" conveyed also the unpleasant imputation of trickiness and moral laxity. Wherever conditions permitted a fair test, the superiority of the American gunner was incontestable. The greater losses of the British whenever the armies met on even terms proved the superior marksmanship of the American militiaman. The adaptation of the fast-sailing schooner to privateering was further evidence of an alert intellect which was quick to adapt means to ends. This quality, to be sure, has been bred in every frontier folk by the very necessities of existence, but it appeared in marked strength in the American of this time. While the shipbuilders of New England were laying the keels of these privateers, Robert Fulton was perfecting his steamboat on the Delaware and Hudson rivers. In the year before the war, the first steamboat appeared on the Ohio, and before the end of the war fourteen were plying on Western waters, and opening up a new era in the American colonization of the continent.

This instinctive adaptation of means to ends was less successful in the realm of American politics. No celerity could compensate for want of prevision on the part of the authorities at Washington. The lesson of the war was not lost upon James Madison, at

least. "Experience has taught us," said he in a message to Congress, — and the words amounted to a confession of error, — "that neither the pacific dispositions of the American people nor the pacific character of their political institutions, can altogether exempt them from that strife which appears, beyond the ordinary lot of nations, to be incident to the actual period of the world; and the same faithful monitor demonstrates that a certain degree of preparation for war is not only indispensable to avert disaster in the onset, but affords also the best security for the continuance of peace."

The indirect effects of war were more widely felt. The blockade affected adversely all the extractive industries upon which the vast majority of the people in all the States depended. Only New England escaped unscathed — and the circumstance was not creditable to the section. In the latter months of 1814 ruin stared the Southern planter in the face. The lifting of the blockade wrought a transformation. Planters in the Old Dominion, who could find no market for their tobacco and wheat on February 13, sold their produce on February 14 at prices which made them rich again. Flour which had found almost no purchasers at seven and a half dollars a barrel sold readily at ten. Imported commodities fell in price correspondingly. Ships put to sea at once laden with the accumulated produce of two long years. The export trade, which had fallen to less than $7,000,000, leaped to $46,000,000 between March and October. Fully two thirds of this wealth accrued to the Southern planters who raised the three

great staples, tobacco, cotton, and rice. The people of the Middle States shared only moderately in this prosperity. The value of the wheat and corn which the farmers of Pennsylvania, New York, and New Jersey raised for export did not much exceed that of tobacco alone.

The return of peace brought relief also to the shipping industry of New England. Vessels which the embargo and the restrictive policy and the hazards of war had kept in port now put to sea again. But the European conditions which had created such immense profits for the Yankee skipper in 1805, 1806, and 1807 had passed away. Foreign ships now bid for the carrying trade of the Atlantic, and their competition cut down freight rates to a point which caused melancholy forebodings in the homes of Boston and Salem shipowners.

The long period of commercial restriction followed by three years of war caused a dislocation of industry in New England. Capital which had been invested in shipping now sought larger returns in the manufacture of those commodities hitherto supplied by British factories. When the embargo was laid, only fifteen cotton mills were in operation, representing a capital of about $500,000. Two years later, capital to the amount of $4,000,000 had been invested in factories which employed nearly 4000 hands. At the close of the war, $40,000,000 were invested in cotton mills which consumed 27,000,000 pounds of raw cotton and gave employment to 100,000 men and women. Hitherto much of the weaving had been done on hand looms in the farmhouses of

New England: only the spinning had been done by machinery. In 1814, Francis Lowell introduced the power loom into his mill at Waltham, Massachusetts, and brought the various processes of cotton manufacturing under one roof. The foundation of the New England factory system was thus laid before the end of the war. In the following decade the famous factory towns on the Merrimac came into existence. The metamorphosis of the section had begun.

The woolen industry received a great impetus in this same period of artificial stimulation, but it failed to expand with the same rapidity, owing to the scarcity and cost of the finer grades of wool. Nevertheless, in the year 1816, about $12,000,000 were invested in the manufacture of woolen fabrics. Like the cotton industry, this owed its development to the policy of Presidents from Virginia. It is one of the ironies of history that Jefferson and Madison should have unwittingly sacrificed Southern planters to build up industries in the North, and that New Englanders should have excoriated those worthies for policies which became the source of New England prosperity.

To these new industries peace spelled disaster. English manufacturers seized the opportunity to unload the goods which they had been piling up in their warehouses for years. Importations which had amounted to $13,000,000 in 1813 rose to the staggering sum of $147,000,000 in 1816. Not even import duties stemmed the tide, for as Lord Brougham stated in Parliament, "It was well worth while to incur a loss upon the first exportation, in order, by

a glut, to stifle in the cradle those rising manufactures in the United States which the war had forced into existence, contrary to the natural course of things."

In October, 1815, the cotton manufacturers of Rhode Island sent a memorial to Congress, stating that their one hundred and forty factories were threatened with destruction by this cut-throat competition. Such complaints seemed unduly apprehensive; yet before the year closed, most of the textile mills had shut down. The distress of New England was no longer feigned. Caught in a process of transition from shipping to manufacturing, capital could neither advance nor retreat. It was a legitimate case for governmental aid. Even Jefferson laid aside his early prepossessions in favor of a simple bucolic life for the American citizen, and admitted that "to be independent for the comforts of life, we must fabricate them for ourselves. We must now place the manufacturer by the side of the agriculturist." Madison, too, departed from the Virginia faith so far as to recommend sufficient protection of "the enterprising citizens whose interests are now at stake" to guard them "against occasional competition from abroad."

Within sight of the blackened walls of the Capitol, in temporary quarters which it had rented, Congress set its hand to the work of national reconstruction. Before many months had passed, the new Capitol, under the supervision of Latrobe, began to rise from the ruins of the old, a symbol of a new era. On the walls of the rotunda, John Trumbull painted scenes

which were to remind coming generations of the heroic days of the Revolution, and within its confines was eventually installed what was left of the library of Congress, with the gaps supplied in part by Jefferson's private collection, which Congress purchased. The new nation was not to disdain wholly the finer aspects of life nor to despise the garnered wisdom of the ages.

In March, 1816, Congress took under consideration a tariff bill which had been drafted on lines marked out by the new Secretary of the Treasury, A. J. Dallas, of Pennsylvania. The debates brought out a wide diversity of interests. Daniel Webster represented admirably the mingled feelings of his New England constituents when he professed to favor existing manufactures, but deprecated any action calculated to produce new industries. He never wished to see the time when the young men of the country would be forced to close their eyes to heaven and earth, and open them in the dust and smoke of unwholesome factories. On the other hand, Calhoun, eschewing a narrow sectionalism, declared that manufacturing must be encouraged as a wise national policy. "Neither agriculture, manufactures, nor commerce, taken separately, is the cause of wealth," said he. "It flows from the three combined and cannot exist without each." The South showed little of the apprehension which John Randolph expressed when he cried, "Upon whom bears the duty on coarse woolens and linens and blankets, upon salt, and all the necessaries of life?" and answered, "On poor men, and on slaveholders."

The bill which Congress eventually passed fixed somewhat lower duties than Dallas had advised. A duty of twenty-five per cent was placed on cotton and woolen goods until June 30, 1819, when it was to be reduced to twenty per cent. By what was known as the minimum principle, all cotton fabrics costing less than twenty-five cents a square yard were held to have cost that amount and were made to pay corresponding duties. The object of this provision was to exclude the coarser and cheaper cotton textiles of India which would menace the products of New England looms. Other important articles were made subject to higher duties, such as rolled and hammered iron, leather goods, hats, carriages, and writing-paper. A comparison of these duties with those of the tariff of 1789 shows a marked increase. Where the average duty was seven and one half per cent in 1789, it was thirty per cent in the tariff of 1816. So far as the intent of the law is concerned, this tariff act committed the country to a fiscal policy in which "revenue was subordinated to industrial needs."

Although the largest vote against the tariff bill came from the South and Southwest, twenty-three out of fifty-seven Representatives voted for the bill. New England showed a prepondering opinion in favor of protection: only ten out of twenty-seven Representatives opposed the bill. The Representatives of the Middle States ranged themselves emphatically on the side of protection; and with them stood the Congressmen from Ohio and Kentucky.

The close of the war found the country with a badly disordered currency and with a bankrupt treas-

ury. Nowhere were the remedial efforts of Congress needed more. The condition of the currency was due, in part at least, to the failure of Congress in 1811 to perceive the regulative influence of a national bank. By refusing to recharter the United States Bank, Congress not only deprived the Treasury of an exceedingly valuable fiscal agent during the war, but also threw the door wide open to indiscriminate and unregulated state banking. Between 1811 and 1816 the number of these state institutions increased from eighty-eight to two hundred and forty-six, all of which exercised the right of issuing notes with little or no restriction. Inflation followed inevitably. During the blockade the banks of the Middle and Southern States suffered great distress by the constant drain of specie to New England and abroad. After the capture of Washington, practically all banks outside of New England were forced to suspend specie payments. The country experienced once more all the evils of a depreciated currency. Southern bank notes were refused for deposit in Philadelphia banks. Notes of these institutions in Philadelphia, in turn, were subject to a discount of twenty-four per cent in Boston. Uncertainty and distrust demoralized financial operations everywhere.

Wiser by the experience of five years, Congress was now disposed to establish another national bank. A first bill, however, fell short of the President's desires and was vetoed. A second bill became law on April 10, 1816. The provisions of this Bank of the United States differed in several particulars from that chartered in 1790. Its capital was three and one

half times as large. One fifth of the total capital of $35,000,000 was to be subscribed by the Government, and the remainder by individuals. Five of the twenty-five directors were to be appointed by the President of the United States. The funds of the Government were to be deposited in the Bank unless the Secretary of the Treasury should otherwise direct, laying his reasons for any such change before Congress. In return for the privileges granted in the charter, the Bank was required to transfer the government funds from place to place without charge, and to pay $1,500,000 to the Government. On its side the Government agreed not to charter any other bank except in the District of Columbia. The circulation of the Bank was limited to the amount of its capital. Its notes were to be payable on demand in specie and to be receivable in all payments to the Government.

Such an institution gave promise of serving the Government as a sound fiscal agent and of assisting materially in the restoration of the currency to a specie basis. The stock was subscribed promptly by 31,334 individuals, all but three thousand of whom resided in the Middle States. New England was still reluctant to support the plans of Mr. Madison; the South had other uses for its capital. To facilitate the resumption of specie payments, Congress passed a joint resolution, that after February 20 of the following year (1817), all dues to the Government should be paid in specie, treasury notes, national bank notes, or notes of banks payable in the "said currency of the United States." This was strong medicine for the

state banks. Unwilling or unable to contract their circulation and to call in their loans, the banks of the Middle States asked to have the date of resumption deferred, on the ostensible ground that the new bank could not be organized in time to assist them. The energetic Secretary of the Treasury disposed of this plea by putting the Bank in operation in January, 1817. On the date set by Congress the banks very generally resumed specie payments.

The propulsive force given to the Government by the war seemed likely to continue. The task of the National Government no longer seemed merely negative, — to "restrain men from injuring one another," in the Jeffersonian phrase, — but positive and constructive. Even Madison, in his annual message of 1815, recommended liberal provision for defense, more military academies, an improved and enlarged navy, protection to manufactures, new national roads and canals, and a national university. He gave his support to Monroe's proposal to fix the peace establishment at twenty thousand men; and he experienced the unique sensation of finding himself in advance of his party, which finally agreed upon an army of ten thousand men. Still more striking evidence of the change which had passed over the party of Jefferson was its willingness to retain the entire naval establishment and to appropriate $4,000,000 for frigates and ships-of-the-line. Clay and Calhoun, speaking for the younger Republicans, agreed that the greatest danger of the future lay in weak government. They were not in the least intimidated by the addition of $80,000,000 to the national debt as the result of war. That sum

represented to their minds simply the price, none too large, of commercial and industrial independence.

These young aggressive spirits seemed at times quite indifferent to nice questions of constitutional law. Calhoun dismissed constitutional objections to a national bank with a wave of the hand: he thought discussion of such abstract themes "a useless consumption of time." On introducing his bill for internal improvements, in December, 1816, he intimated that he did not propose to indulge in metaphysical subtleties respecting the Constitution. "The instrument was not intended as a thesis for the logician to exercise his ingenuity on; . . . it ought to be construed with plain good sense." If Clay exhibited more sensitiveness to constitutional limitations, it was because he had to clear himself from the charge of inconsistency. In supporting the Bank Bill in 1816 he frankly confessed that he had changed his mind on the point of constitutionality. He had believed the incorporation of a bank in 1811 unwarranted by the Constitution; but conditions had changed. What was then neither necessary nor proper was now both necessary and proper. The interpretation of the Constitution must always take existing circumstances into account. If Clay did not add to his reputation as an expounder of the Constitution by this speech, he represented admirably, nevertheless, the changes which circumstances had wrought in the convictions of his associates.

Against these new tendencies John Randolph set himself stark and grim. "The question is," said he,

replying to Calhoun's new nationalism, "whether or not we are willing to become one great consolidated nation, or whether we have still respect enough for those old, respectable institutions [the States] to regard their integrity and preservation as a part of our policy." Randolph spoke for a generation which was passing away; but his words touched a responsive chord in the breast of President Madison. On March 3, 1817, as he was about to leave office, he sent to Congress a message vetoing the Internal Improvements Bill and warning his party associates of the danger of latitudinarian views of the Constitution. This message was Madison's farewell address. It was thoroughly characteristic of the man and the statesman.

The relaxing of Republican doctrines, and of party ties generally, divested the presidential election of any real political significance. The Federalists were thoroughly discredited. As a party they made no concerted effort to nominate candidates. Virtually, therefore, the selection of a President rested with the congressional caucus of the Republican party. The choice lay between two members of the President's Cabinet: James Monroe, Secretary of State, and William H. Crawford, Secretary of the Treasury. Governor Tompkins, of New York, was put forward by enthusiastic partisans from that State, but he was not a national figure in any sense and commanded no support outside of his State. Intrigue played a part in this caucus, if contemporary testimony may be believed. Tradition has it that Martin Van Buren and Peter B. Porter prevented their New York delega-

tion from voting for Crawford and thus threw the nomination to Monroe. Governor Tompkins was the choice of the caucus for Vice-President. No one could safely affirm that these nominees were the choice of the rank and file of the party. Here and there public meetings were held to protest against the dictation of the congressional caucus; but no organized opposition developed. The campaign proved to be a tame affair. Nowhere was there a real contest. Only three States, Massachusetts, Connecticut, and Delaware, chose Federalist electors. Not a ripple of excitement stirred the public when announcement was finally made that Monroe had received 183 electoral votes and Rufus King, 34. For the fourth time a Virginian had been raised to the Presidency.

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CHAPTER XIV

THE WESTWARD MOVEMENT

At the end of the second decade of the nineteenth century, the people of the United States were still in the main a homogeneous folk, native-born descendants of native-born ancestors. The tide of immigration which was by the end of the century to inundate the nation and transform its character was just beginning to flow. Its volume between the close of the Revolution and the year 1820, when the first official statistics were collected, must remain a matter of conjecture. In 1817, the painstaking Niles, in his *Register*, estimated that about twenty-two thousand immigrants had arrived in that year in the ports of New York, Philadelphia, and Boston, of whom four thousand were Germans and the rest inhabitants of the British Isles. Fully one half of these British subjects were brawny Irishmen, often a turbulent lot, but always in demand for hard labor on the roads and canals which were projected in every part of the Union. Among these newcomers, however, were many undesirables. Not a few English parishes emptied their poorhouses by sending the helpless inmates to the New World. Some of these deported paupers, no doubt, found a a livelihood and became respectable citizens; but the records of almshouses in the Eastern States indicate that many of these unfortunates had only exchanged one asylum for another. In the Philadelphia poor

houses in the early thirties, from one third to one half of the inmates were foreign-born. Cargoes of redemptioners came into American ports as late as the year 1818. Of that traffic which was bringing helpless Africans into bondage in the Southern States, more will be said in a subsequent chapter.

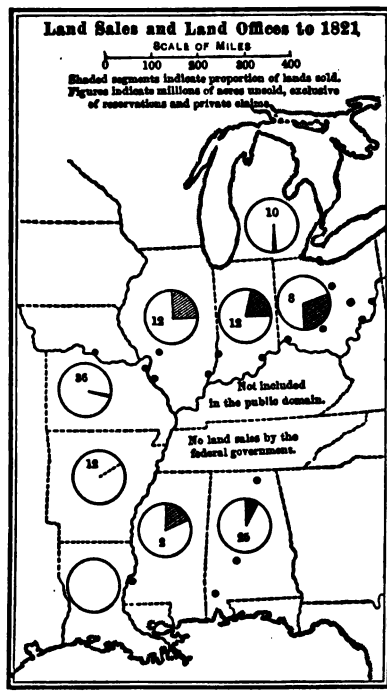
Among the new arrivals, it goes without saying, were men and women, who, and whose descendants, contributed mightily to the building up of American Commonwealths. Entire communities seeking an asylum in the New World continued to arrive as in the early years of the seventeenth century. In 1817, a body of German separatists from Württemberg, under the leadership of Joseph Baumeler, landed at Philadelphia. Like the English Pilgrims they sought freedom from religious persecution, but the Plymouth which they founded was on a new frontier — at Zoar in the wilderness of Ohio.

What particularly impressed every foreign traveler in America during these years of transition and expansion was the incessant movement of society. The earlier westward movement of population had never wholly ceased, but it had been retarded by the war. The return of peace was like the first warm days of spring. The roads leading West were fairly inundated by a swelling stream of emigrants. An observer at the Genesee turnpike noted a train of some twenty wagons and one hundred and sixteen persons on their way to Indiana from a single town in Maine. A traveler on his way from Nashville to Georgia, in January, 1817, met an astonishing number of people from the Carolinas and Georgia who were bound for

the cotton lands of Alabama. He counted over two hundred conveyances and three thousand people, driving herds of cattle and droves of hogs before them. But the great highway to the West lay through Pennsylvania. On the road from Chambersburg to Pittsburg, Fearon, an intelligent and in such particulars a trustworthy English traveler, counted one hundred and three stage-wagons, drawn by four and six horses, proceeding from Philadelphia and Baltimore to Pittsburg, and seventy-nine wagons bound in the opposite direction. "On the road," comments Fearon, "every emigrant tells you he is going to Ohio; when you arrive in Ohio, its inhabitants are 'moving' to Missouri and Alabama; thus it is that the point for final settlement is forever receding as you advance, and thus it will hereafter proceed, and only be terminated by that effectual barrier — the Pacific Ocean."

To this emigration all sections of the Union contributed. In the back-country of New England — in Maine, New Hampshire, Vermont, and western Massachusetts — was a restive population little loved by the governing class. President Timothy Dwight, of Yale College, described these people as "impatient of the restraints of law, religion, and morality," contentious, always complaining, and always indebted. They were likely to be Baptists or Methodists, by persuasion, and Democrats in politics. As small farmers their lot was a hard one. They needed only the incentive of cheap lands in the West to sever the slender ties which bound them to the stony hillsides of New England. Yet the older towns of New Eng-

land also complained of the Western fever which was carrying off the available labor supply. Fearon found "the small and middling tradesmen" always ready to sell out when business got bad and "pack up for the back-country." The immediate destination of these New Englanders was western New York. Within a decade what had been a frontier area was filled with an industrious population eager to secure markets for the surplus products of their farms.



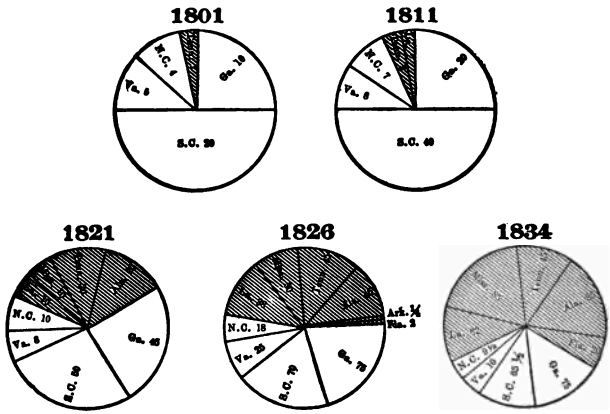
Before a very large number of New Englanders passed beyond western New York, emigrants from the Middle States were pushing into the Ohio country, where Harrison's victories had opened vast tracts to the white settlers. The earliest settlers in Indiana and Illinois, however, were of Southern extraction. Tennessee and Kentucky, having no longer a supply

of good land at low prices, sent the younger generation on to a new frontier. In the year 1816 the father of Abraham Lincoln took his family across the Ohio on a raft and hewed his way into the timber lands along the river bottoms of Indiana. With these migratory Kentuckians went also descendants of the Germans and the Scotch-Irish who had peopled the Great Valley in the previous century. Even from the Carolinas came all sorts and conditions of men, — poor whites, Quakers, Baptists, — small farmers whom the advancing plantation system was driving from the uplands.

Even more significant than this advance of population into the region north of the Ohio was the contemporaneous movement from the Southern Seaboard States into the cotton lands of the Gulf plains. The way had been prepared by Andrew Jackson's conquest of the Creeks. Alabama was the immediate goal of the migrating Southerner. From Kentucky, also, but more particularly from Tennessee, stalwart pioneers entered this new El Dorado. The father of Jefferson Davis was one of those who tried their luck in the alluvial plains of the lower Mississippi. By the year 1820, the area of settlement had extended from southern Tennessee to Mobile, and from Mobile to the Mississippi along the Gulf.

The causes and consequences of this colonization of the Southwest form a vital chapter in the economic history of the country. In the year before the war, Virginia, the Carolinas, and Georgia produced 75,000,000 pounds of cotton; the only other cotton-raising States, Tennessee and Louisiana, pro-

duced 5,000,000 pounds. Ten years later, the Seaboard States raised 117,000,000 pounds; the Southwest, 60,000,000. In another decade the States of the Southwest had outstripped the Old South. This comparison throws a flood of light upon Southern history. The invention of the cotton gin had made



The Cotton Crop in the United States 1801-1834

Based on Estimates furnished to Congress by the Secretary of Treasury

Figures indicate the crop in million pounds

Shaded segments indicate the Gulf States

possible the cultivation of the short-staple cotton plant, which was the only variety that could be raised profitably in the uplands. Occurring just at the moment when the use of the power loom in factories was giving an unprecedented stimulus to the manufacture of cotton, the cotton gin worked a revolution in Southern life and industry. From the tidewater,

with its large plantations worked by African slaves, the cultivation of cotton passed into the region above the fall-line of the rivers, where the small farmer practiced a diversified agriculture. Socially and politically the two regions had always been distinct. The gentlemen planters of the tidewater, with much the same outlook as the English gentry of the same period, regarded the democratic yeomen of the Piedmont with distrust not unmixed with contempt. By excluding them from their proportionate representation in the state legislatures, the aristocratic planters maintained an ascendency which was at once political and social. But as cotton-growing became more profitable and advanced into the interior, the farmer of the uplands found himself pushed to the wall. Either he must adopt the plantation system and purchase slaves, or sell his land and move on. For want of capital large numbers chose the latter alternative and swelled the numbers of those who had already set their faces westward.

The communities which within six years after the Treaty of Ghent were admitted into the Union as the States of Mississippi and Alabama, did not at first differ materially from Indiana and Illinois, which became Commonwealths at the same time. Much the same obstacles confronted the pioneer in the pine forests of Mississippi as in the hard woods of the Northwest. Either as squatter or *bona fide* purchaser he had with the aid of his neighbors hewed out a clearing, or single-handed girdled the trees, and laid the sills of his log cabin. A "raising" or "frolic" was one of the few opportunities for social intercourse

in the hard life of the frontiersman. Between the stumps of his clearing he planted his first crop of Indian corn; and what the soil did not yield for his sustenance, he supplied with his trusty rifle. Time wrought vast transformations in these new communities. The thriftless, who scratched the surface of the ground and then sold out to a newcomer of sterner fiber, passed on to a new frontier. Log cabins gave way to frame houses. Clearings became well-tilled farms. Better methods of cultivation extracted a surplus of produce which could be sent to market. Along the rivers of the Northwest, cities sprang up like mushrooms.

From this point the history of the Southwest diverged from that of the Northwest. The virgin lands of the Gulf attracted also the planter with his capital invested in African slaves. Once again the small farmer felt the combined pressure of social and economic forces. He saw his wealthier neighbor acquire the more fertile lands; he found himself thrust into a socially inferior class; and again he yielded to fate. While a democratic society of self-reliant yeomen was developing in the northern half of the Mississippi Valley, a society based upon a plantation economy and aristocratic in its outward characteristics was forming in the Gulf States. Yet in its aggressiveness and commercial enterprise, the new South resembled the Northwest rather than the old South.

While the South was producing staples for an ever-growing market, it became itself the market for the surplus products of the Northwest. An active internal trade sprang up between the sections in spite

of the natural barriers to commercial intercourse. Live stock could be driven to market. It was a common occurrence to see droves of thousands of "razorback" hogs on their way from Kentucky to the Seaboard States, feeding on nuts and roots by the way. Rivers were the chief highways for such produce as could not provide for its own locomotion. The Western waters floated all sorts of craft, from the lumber raft to the flatboat, laden with pork, cheese, butter, flour, corn, and whiskey. The greater part of these boats were makeshifts, and made no return voyage. It was not until 1809 that a barge was warped upstream from New Orleans to Nashville. The entire traffic on the Mississippi and the Ohio was carried on until 1817 in less than a score of keel boats, which made the voyage downstream from Louisville to New Orleans in about forty days, and upstream in ninety. When, then, a steamboat suc-

ceeded in making a return voyage in twenty-five days, it was hailed as an epoch-making performance. In the next year twenty steamboats were competing for the river traffic; and three years later (1820) seventy-two were in actual service. Yet the steamboat did not drive the flatboat from the Western rivers. So late as 1840 one fifth of the freight handled on the lower Mississippi was carried in flatboats or barges.

The rapid rise of this internal commerce between the farmer of the Northwest and the cotton planter of the South increased the ability of both to purchase manufactures in the Eastern markets. Both sections had wants which they could not supply by their simple household industries. They had to import not only their farming implements, but most of those articles, useful or ornamental, which were thought indispensable to a higher civilization. "Spots in Tennessee, in Ohio, and Kentucky," comments an English traveler, "that within the lifetime of even young men, witnessed only the arrow and the scalping knife, now present the traveler with articles of elegance and modes of luxury which might rival the displays of London and Paris." Most of this stock was transported over the mountains from Philadelphia or Baltimore. In 1820, three thousand wagons carried to Pittsburg, the distributing center of the West, nearly eighteen million dollars' worth of merchandise.

The commercial interests of the East were quick to see the possibilities of this new market. An eager rivalry sprang up between the merchants of New

York, Philadelphia, and Baltimore. Everywhere ways and means of cheaper transportation were discussed. In this subject the Western farmer was vitally interested, for freight charges added nearly one third to the cost of merchandise transported over the mountains. The cotton planter of the Seaboard States, also, feeling the competition of the Southwest, where riverways were abundant and easily navigable, saw the need of better roads to tidewater, in order to lessen the cost of marketing his produce.

The popular demand for better roads was not recent. All the States had encouraged, directly or indirectly, the building of turnpikes and bridges. Between 1793 and 1812, Pennsylvania had chartered fifty-five turnpike companies, and other States had been scarcely less ready to grant articles of incorporation to stock companies. Private enterprise had, indeed, done much to improve communication along the seaboard. Turnpikes and bridges had shortened the journey by stage from Boston to Washington to four and a quarter days by the year 1815. The city of New York was in 1816 within twenty-four hours of Albany by the Hudson River steamboats.

Numerous canal companies had also been chartered; but of all the canals projected, only three had been completed when the War of 1812 began: the Dismal Swamp Canal in Virginia, the Santee Canal in South Carolina, and the Middlesex Canal in Massachusetts. It remained for New York to usher in a new era in internal communication by authorizing in 1817 the construction of the Erie Canal. In the ardent imagination of its chief promoter, De Witt

Clinton, this canal was destined to be "a bond of union between the Atlantic and Western States" and "an organ of communication between the Hudson, the Mississippi, the St. Lawrence, the Great Lakes of the North and West, and their tributary rivers," creating "the greatest inland trade ever witnessed" and transforming New York into a vast emporium of commerce and "the granary of the world."

This bold bid for Western trade alarmed the merchants of Philadelphia, particularly as the completion of the national road threatened to divert much of their traffic to Baltimore. In 1825, the legislature of Pennsylvania grappled with the problem by projecting a series of canals which were to connect its great seaport with Pittsburg on the west and with Lake Erie and the upper Susquehanna on the north.

The magnitude of the transportation problem was such, however, that neither individual States nor private corporations seemed able to meet the demands of an expanding internal trade. As early as 1807, Albert Gallatin had advocated the construction of a great system of internal waterways to connect East and West, at an estimated cost of $20,000,000. But the only contribution of the National Government to internal improvements during the Jeffersonian era was an appropriation in 1806 of two per cent of the net proceeds of the sales of public lands in Ohio for the construction of a national road, with the consent of the States through which it should pass. By 1818 the road was open to traffic from Cumberland, Maryland, to Wheeling, Virginia.

In 1816, with the experiences of the war before

him, no well-informed statesman could shut his eyes to the national aspects of the problem. Even President Madison invited the attention of Congress to the need of establishing "a comprehensive system of roads and canals." Soon after Congress met, it took under consideration a bill drafted by Calhoun which proposed an appropriation of $1,500,000 for internal improvements. Because this appropriation was to be met by the moneys paid by the National Bank to the Government, the bill was commonly referred to as the "Bonus Bill." "Let it not be forgotten," said Calhoun in advocacy of his bill, "that it [the size of the Union] exposes us to the greatest of all calamities, — next to the loss of liberty, — and even to that in its consequences — disunion. We are great, and rapidly — I was about to say fearfully — growing. This is our pride and our danger; our weakness and our strength. . . . We are under the most imperious obligation to counteract every tendency to disunion. . . . Whatever impedes the intercourse of the extremes with this, the center of the Republic, weakens the Union."

The one section which was impervious to these national considerations at this moment was New England; but it was President Madison, and not New England, who defeated the Bonus Bill. On the day before he left office, Madison sent to Congress a notable veto message. Reverting to his earlier faith, he pronounced the measure unconstitutional. Neither the express words of the Constitution nor any fair inference could, in his judgment, warrant the exercise of such powers by Congress. To pass the bill over his

veto was impossible. Monroe, too, in his first message to Congress intimated that he also held strict views of the powers of Congress. The policy of internal improvements by Federal aid was thus wrecked on the constitutional scruples of the last of the Virginia dynasty.

Having less regard for consistency, the House of Representatives recorded its conviction, by close votes, that Congress could appropriate money to construct roads and canals, but had not the power to construct them. As yet the only direct aid of the National Government to internal improvements consisted of various appropriations, amounting to about $1,500,000 for the Cumberland Road.

Circumstances were also pressing the claims of the Far West upon the Government. Beyond the scattered settlements of Illinois and Indiana extended vast forests, known only to the Indians and the fur traders. With the experiences of the war fresh in mind, the new Secretary of War, Calhoun, urged upon the Government the necessity of taking resolute measures to hold this territory. Laws excluding foreigners from the Indian trade were passed; forts were established at strategic points like Chicago, Prairie du Chien, and Green Bay; and in 1820, Governor Cass, of the Michigan Territory, was sent on an expedition through the Wisconsin forests into Minnesota, to assert American claims wherever British influence was still felt.

Still farther west lay an almost unknown region of imperial dimensions. Save where venturesome pioneers had pushed up the Arkansas and the Mis-

souri, and where the Spaniards maintained their feeble hold in the Southwest, no white men inhabited the great prairies which swept westward to the foothills of the Rockies. Only nomadic Indian tribes and occasional traders followed the buffalo trails across this wide expanse. Between the Rocky Mountains and the Pacific was the region which Lewis and Clark had penetrated. Along the valley of the northern branch of the Columbia River, the Hudson's Bay Company had planted their trading posts. Farther to the south lay Spanish California and the ill-defined region to the eastward over which *presidios* maintained a shadowy jurisdiction.

On October 20, 1818, Benjamin Rush and Albert Gallatin, ministers to England and France respectively, concluded a convention with Great Britain which left the fate of the Oregon country in suspense for a period of ten years. To the British claims of prior discovery by Cook and Mackenzie and of prior occupation by the Hudson's Bay Company, the American commissioners opposed the claims based on the voyage of Captain Gray in 1792 and on the founding of Astoria by John Jacob Astor in 1811. It was finally agreed that the northern boundary of the United States should run from the Lake of the Woods to the Stony Mountains, along the forty-ninth parallel, and that the disputed country beyond the mountains should be occupied jointly for a period of ten years. An agreement was also reached regarding the Newfoundland and Labrador fisheries.

On another frontier conditions existed to which Congress could not remain indifferent. East Florida

was still a thorn in the side of Georgia and Alabama. The province had become a rendezvous for pirates, filibusters, renegade Indians, and runaway negroes. Creek warriors who would not submit to the loss of their lands had taken refuge with their kinsmen, the Seminoles, and were inciting malcontents of every stripe against the whites. A band of negroes, estimated at not less than a thousand in number, together with some Creek Indians, had taken possession of an abandoned fort on the Apalachicola and had terrorized the country for miles around. The Spanish commander at Pensacola was summoned to destroy this pirates' nest and to disperse the marauders; but he was either unable or unwilling to do so, and in 1816 a red-hot shot from a United States gunboat blew up the magazine of the negro fort, killing nearly three hundred men, women, and children. Early in 1818, in equally summary fashion troops of the United States expelled a band of freebooters from Amelia Island.

The slight regard which the United States paid to the territorial sovereignty of Spain in Florida sprang from a general conviction that Spain could not and would not observe the provisions of the Treaty of 1795. Spain had then agreed to restrain the Indians living within her borders from attacking the citizens or Indians of the United States. President Monroe seemed to assume that Spain had forfeited her rights over Florida. At all events, he authorized General Andrew Jackson to assume command of the forces at Fort Scott and to call on the governors of adjacent States for militia to terminate the war.

This order of December 26, 1817, was stated in dangerously broad terms. Jackson did not doubt for an instant that it authorized him to pursue the Indians into Florida. To his mind the time seemed opportune for the seizure of East Florida as an indemnity for the outrages committed by the Seminoles. He wrote to the President to this effect. "Let it be signified to me," said he, "through any channel (say Mr. J. Rhea) that the possession of the Floridas would be desirable to the United States and in sixty days it will be accomplished."

To his dying day Jackson maintained that the President signified his approval through Congressman Rhea, of Tennessee. Monroe denied that he had read Jackson's letter until after the exploits which so nearly plunged the country into war with Spain. Whatever may be the truth of the matter, General Jackson acted in accord with what he believed to be the President's desires. With a thousand men he marched across the border and was soon in possession of St. Mark's. Among those who fell into his hands was Alexander Arbuthnot, a Scotch trader who was suspected of inciting the Indians. Continuing his march, Jackson surprised and captured Suwanee, another rendezvous of Indians and runaway negroes. Here he found Robert Ambrister, another British subject, who was also regarded as a suspicious character. Returning to St. Mark's, Jackson handed these two suspects over to a court martial, which found both guilty of giving aid and comfort to the enemy and of inciting or waging war against the United States. Arbuthnot was

hanged from the yardarm of his own schooner; Ambrister was shot. The fall of Pensacola finished the campaign. By the end of May, 1818, Florida was in the possession of the troops of the United States and Jackson was on his way to Tennessee, the idol of his men and a national hero in the estimation of the people of the Southwest.

The outcome of these exploits might easily have been war with both Spain and Great Britain. Don Luis de Onis, the Spanish Minister at Washington, immediately suspended the negotiations then in progress respecting the Floridas and made a spirited protest "against these acts of hostility and invasion." He demanded the immediate restitution of the places which had been seized, indemnity for all damage to property, and the punishment of General Jackson. As for Great Britain, Lord Castlereagh afterward said that, such was the temper of Parliament and the country, war might have been produced by holding up a finger and an address to the Crown carried by an almost unanimous vote.

The Cabinet of President Monroe was divided over the course to be pursued. Calhoun insisted that Jackson had virtually committed an act of war, which should be promptly disavowed. But Adams held — and the President was inclined to side with him — that in reality Spain had been the aggressor, and that Jackson had not violated the spirit of his orders. In order to terminate the war, Jackson had been obliged to cross the Spanish line. He had not done so with the purpose of waging war upon Spain.

Following a memorandum made by the President,

Adams replied to Don Onis in this spirit. Later, in a masterly state paper, he set forth the intolerable conditions which obtained on the Florida frontier. The lax conduct of the Spanish authorities was held to justify the aggressive measures of Jackson. The United States was prepared to restore Pensacola and St. Mark's whenever Spain should give guaranties for the observance of treaty obligations. So far from

consenting to punish Jackson, the United States demanded the punishment of those Spanish officials who had so flagrantly violated the obligations of the Treaty of 1795. "Spain must immediately make her election either to place a force in Florida at once adequate for the protection of her territory and to the fulfillment of her engagements, or cede to the United States a province of which she retains nothing but the nominal possession." This latter alter-

native, indeed, the Administration never lost from view.

Confronted by the revolt of all her American colonies, Spain could hardly resist this insistent pressure upon a province which she could neither govern nor defend. On February 22, 1819, Don Onis set his hand to a treaty which ceded the Floridas in return for the assumption by the United States of claims of American citizens against her to an amount not exceeding $5,000,000. The treaty contained also a definition of the boundary between Spanish and American possessions on the North American continent. Beginning at the mouth of the Sabine River, the line ran along that river to the thirty-second parallel; thence due north to the Red River, which it followed to the hundredth meridian; thence north to the Arkansas and along that river to its source; thence to the forty-second parallel, which it followed to the Pacific. As the United States renounced all claims to the west and south of this boundary, so Spain surrendered whatever shadowy title she had to the Northwest.

The ratification of the Florida Treaty was delayed by the attempt of the Spanish Crown to grant extensive tracts to certain grandees, and by the vigorous opposition of Henry Clay in the House of Representatives. The treaty seemed to him a bad bargain. "What do we get?" he cried. "We get Florida loaded and encumbered with land grants which leave scarcely a foot of soil for the United States. What do we give? We give Texas free and unencumbered, and we surrender all our claims on

Spain for damages not included in that five millions of dollars." He challenged the right of the President and Senate to alienate territory without the consent of the House. Behind Clay's opposition lay some personal pique against the President and his Secretary of State; but he voiced, nevertheless, the spirit of the Southwest, which already looked toward Texas as a possible field of expansion and resented its surrender.

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CHAPTER XV

HARD TIMES

THE phrase "era of good feelings" applied to the Administration of President Monroe is a misnomer. It is descriptive neither of politics nor of business and industry, for the historic Democratic party was all but rent by bitter personal animosities, and the country was prostrated by a severe industrial crisis.

The first symptoms of hard times appeared in the early months of the year 1819. Undoubtedly the causes of the crisis were world-wide; but local conditions go far to explain the industrial collapse in the United States. All indications point to the conclusion that the country was experiencing the inevitable reaction from a period of too rapid commercial expansion and of unsound speculation. The high prices of commodities after the war had given a sort of fictitious prosperity to industry and trade, and had encouraged unduly the spirit of commercial enterprise. On credit easily secured from wild-cat banks, the Western pioneer had bought lands beyond the purchasing power of his own meager capital; and the speculator in turn had borrowed money to secure title to lands which he would unload upon unsuspecting settlers. State banks had met these demands by liberal issues of notes which were imperfectly covered by their specie reserves. It needed only a

sudden demand for liquidation to cause widespread distress.

The unwise management of the National Bank may have contributed to the approaching disaster. The branch banks in the South and West had loaned freely, issuing notes which were payable at any branch of the National Bank. Capital was thus diverted from the East to sections of the country where there was least conservatism in banking. In 1818, the directors of the Bank became alarmed at the excessive expansion of credit, and issued instructions which compelled the redemption of notes at the bank where they were issued. At the same time the branch banks curtailed their loans. This sudden reversal of policy caused a fearful pressure which was transmitted from creditor to debtor all along the line.

Every sufferer by the panic was disposed to blame the National Bank for his misfortunes, particularly as it was common rumor that the directors of the Bank had speculated in its stock and had used their influence to cripple local banks. Congress had been obliged to take cognizance of these charges and to appoint a committee to investigate the condition of the institution. On the report of this committee, in January, 1819, the stock of the Bank fell from 140 to 93. The investigation revealed nothing worse than mismanagement; but a vigorous effort was made in Congress to revoke the charter.

The widespread hostility of the West and South toward the National Bank was born at this time. Everywhere it was known as "the Monster." State

after State passed acts to tax the branch banks out of existence. The decision of Chief Justice Marshall, to be sure, in the famous case of *M'Culloch* v. *Maryland*, declared emphatically that the States had no constitutional power to tax the branches of an institution chartered under the laws of the United States; nevertheless, the legislature of Ohio deliberately levied such a tax, and when resistance was offered to its collection, withdrew the protection of the State from the branch banks. Feeling themselves the victims of the money power, the people in many of the Western States resorted to the remedies which were broached during hard times under the Confederation. Kentucky became notorious by reason of its laws in behalf of the debtor class. In every Western State there was a disposition to seek shelter from the operation of federal law behind the ægis of State rights. The people of these newer communities were slow to accept the force of precedent in cases decided by the federal courts. Andrew Jackson voiced this feeling when he became President. "Mere precedent," said he, "is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the States can be considered as well settled."

That there was much real suffering during this panic admits of no doubt. Niles estimated that not less than twenty thousand persons were seeking employment in Philadelphia in the summer of 1819, and quite as many wandering in the streets of New York looking for work. In both cities soup-houses

were established by private charitable societies to relieve distress in the following winter. In the city of New York, during the year 1816, over nineteen hundred unfortunates were imprisoned for debt; and of these, over seven hundred owed less than twenty-five dollars.

But it was not merely the city dweller who felt the pinch of poverty. Thousands of Western settlers who had purchased land under the Act of 1800, which permitted deferred payments, found themselves insolvent. More than $21,000,000, one fifth of the national debt, remained unpaid in the year 1820. To the importunities of these debtors Congress had yielded from time to time, but it was not until 1821 that it passed the first general relief act. Those who had not completed their payments within the prescribed five years were then permitted to give up the land which they had not paid for, and to apply the payments already made to the full purchase of the lands which they retained. Arrears of interest were remitted.

In 1820, Congress passed an act which wrought a far-reaching change in the disposal of the public domain. The credit system was abolished outright. After July 1, 1820, land was to be sold for cash at a minimum price of a dollar and a quarter an acre, and in eighty-acre tracts. A payment of one hundred dollars, then, would make a settler the owner of eighty acres in his own right. The prospect of actual ownership of a small tract made him far less ready to listen to the voice of the tempter in the form of the speculator, who had heretofore lured

him to make larger purchases on credit than he could ever pay for by the labor of his hands.

In the midst of this period of financial depression, the Territory of Missouri applied for admission into the Union. On February 13, 1819, while an enabling act was under consideration in the House of Representatives, James Tallmadge, of New York, moved an amendment which touched Southern interests to the quick. "*And provided*, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes, whereof the party shall have been duly convicted; and that all children born within the said State, after the admission thereof into the Union, shall be free at the age of twenty-five years."

This bold attempt to prevent the spread of slavery provoked a brief but momentous debate. Clay left the Speaker's chair to remonstrate, "in the name of humanity," against a policy which could result, he believed, only in the misery of the slaves of the South. The lot of the negro would be vastly

improved if the unfortunate people were more widely dispersed. Taylor, of New York, called this a specious plea. "It is that humanity," said he, "which seeks to palliate disease by the application of nostrums, which scatter its seeds through the whole system." To open the West to slavery would be simply to create an additional demand for the importation of slaves. Of those Southern Representatives who took part in this debate, not a man posed as the defender of slavery in the abstract. Barbour, of Virginia, frankly admitted that slavery "like all other human things is mixed with good and evil — the latter, no doubt, preponderating." And Johnson, of Kentucky, maintained that though slavery might be a necessary evil, "not incompatible with true religion," even so "slavery must still be a bitter draught."

What rankled in the breasts of all Southern men was the insinuation that their social system was founded on hypocrisy and tyranny. Tallmadge commented with biting sarcasm on the willingness of Southern gentlemen to contribute to missionary enterprises for the uplifting of the Hottentots and Hindus, and their determination to keep their African slaves in ignorance. And his colleague contrasted the plantations, overrun with weeds on one side of Mason and Dixon's line, with the cultivated farms on the other: in Pennsylvania, he observed "a neat, blooming, animated, rosy-cheeked peasantry"; in Maryland, "a squalid, slow-motioned black population." These were barbed shafts which left sore wounds.

When the Union was formed, African negroes

were held in servitude in all but two of the States. At the time of this debate, slavery had been abolished, or was on the way to ultimate extinction, in every State north of Maryland and Delaware. Climate rather than humanitarian considerations sealed the fate of slavery at the North; and climate, in the last analysis, fastened African slavery on the South. As the South became committed to the raising of a staple, and that staple cotton, the negro was regarded as an indispensable factor in plantation economy. There were far-sighted individuals, it is true, who deprecated slavery on humanitarian grounds; but they were, for the most part, citizens of border States where the profitableness of negro labor was less apparent. Even in these communities opposition to slavery was tempered by dread of what emancipation might bring in its train. The history of Santo Domingo revealed the hideous possibilities of a negro insurrection. No father of a family could contemplate with equanimity the proximity of a large body of free, semi-civilized blacks. For a time even prominent slaveholders favored the aims of the Colonization Society which proposed to deport emancipated blacks to the African coast. So late as 1820 the Governor of Virginia recommended an appropriation by the legislature for the emancipation and removal of the negroes.

Although slavery was a local institution, and regulated by state law, its existence was recognized by the Federal Convention of 1787. The arrangement which obtained under the old Confederation, whereby five slaves were to count as three whites in

apportioning representation and taxes, was continued; the mutual obligation of the States to return fugitives from justice and labor was distinctly stated in the Constitution; and the slave trade was permitted to continue at least to the year 1808.

In 1793, Congress had met its constitutional obligations by enacting a law for the return of fugitive slaves; and in 1794, Congress passed an act — "the first national act against the slave trade" — which prohibited all trade in slaves from the United States to any foreign country. By the opening of the new century all the States had forbidden the importation of slaves from abroad. But in 1803, South Carolina again legalized the slave trade; and in 1805, Congress after a brief interdiction removed all restrictions upon the importation of slaves into the Louisiana Territory. The slave trade at once assumed alarming proportions. It was officially stated that between 1803 and 1807, 39,075 negroes were brought into the port of Charleston. Eighteen hundred of these unfortunate blacks were imported in American vessels. One half of the consignees of these slavers were Americans, of whom thirteen were natives of Charleston and eighty-eight of Rhode Island.

This traffic, coupled with the alarm caused by negro insurrections in the West Indies, prepared the public mind for positive action, as the year approached when Congress might constitutionally prohibit the foreign slave trade. The Act of March 2, 1807, however, only partially met the expectations of the anti-slavery people. The African slave trade

was forbidden, but negroes illegally imported were to be disposed of as the legislatures of the several States should determine. There was reason to fear that the Southern States would neglect to legislate on this important matter, and that the act would be indifferently enforced. Moreover, the coastwise slave trade for purposes of sale was not interdicted, but forbidden only in vessels under forty tons burden.

That the Act of 1807 did not prevent the African slave trade was patent to every one who knew conditions in the Southern Seaboard States; but the extent of this traffic can only be surmised. During the debates on the Missouri Bill, Tallmadge stated that fourteen thousand negroes had been brought into the country within the last year, and the statement was not challenged.

When the Missouri controversy was renewed in the session of December, 1819, the number of free States equaled the number of slave States. The addition of a twenty-third State, then, would unsettle the equilibrium between the sections in the Senate. A growing antagonism based upon widely different economic and social organizations was coming to be felt — felt rather than clearly perceived and openly recognized. In the year 1800, the two sections had been nearly equal in population; in 1820, the North outnumbered the South by over half a million. This disparity in numbers had a direct political significance, for the national House of Representatives was beyond all question controlled by the delegations from the free States. No great prescience was needed to warn the South that in self-defense it must maintain

the even balance of sections in the Senate. The contest for Missouri was therefore essentially "a struggle for sectional domination."

The Tallmadge amendment was passed by the House, but rejected by the Senate, after a heated debate which convinced Southern statesmen that there was a distinct anti-slavery sentiment at the North. The adjournment of Congress threw the whole controversy into the crucible of public opinion. The latent hostility of men and women with humanitarian sympathies was at once raised to white heat. Mass meetings in city, town, and county passed resolutions against the spread of slavery and the admission of more slave States. Yet it can hardly be said that the public conscience was deeply touched. The leaven of abolitionism had to work many years before it could produce results in politics.

The whole question assumed a new guise when Congress met in December, 1820. The people of Maine had held a convention and formed a constitution, and were now applying for admission as a State. Here was a free State which would offset Missouri if it were admitted as a slave State. When the House passed a bill to admit Maine, the Senate promptly attached to it, as a "rider," a bill for the admission of Missouri without any prohibition of slavery. It was to this bill that Senator Thomas, of Illinois, representing a constituency divided against itself on the subject of slavery, offered an amendment in the nature of a compromise. He would admit Missouri as a slave State, but prohibit slavery forever in the rest of the old Province of Louisiana north of 36° 30′. The

Senate accepted this amendment and sent the bill to the House. Here the original Maine Bill was stripped of the rider and the Thomas amendment by large majorities. Shortly after this vigorous assertion of independence, the House passed a bill for the admission of Missouri with the prohibition of slavery. The deadlock seemed complete.

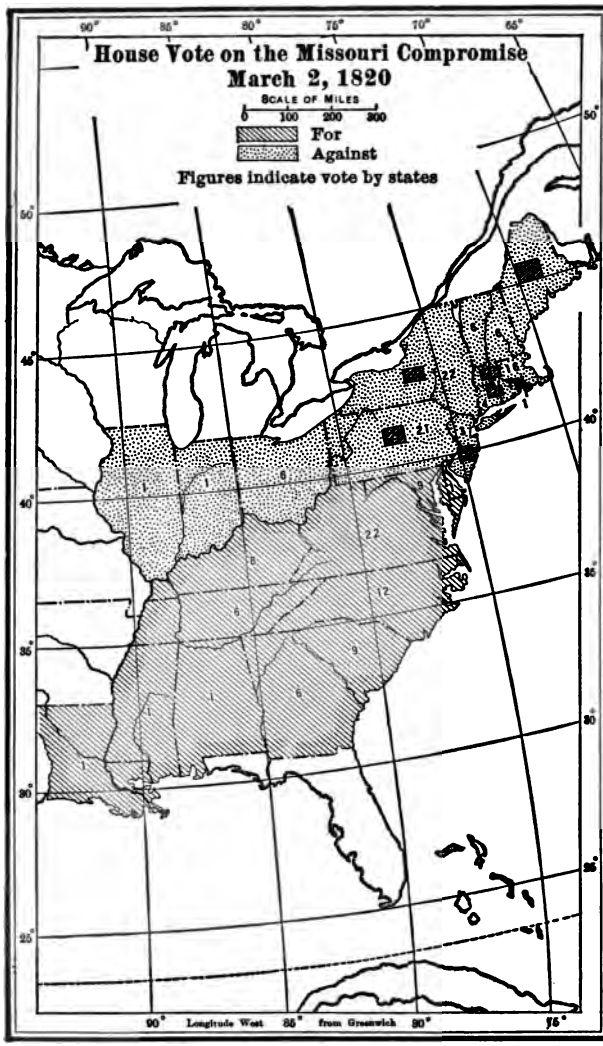
The constitutional aspects of the problem called forth some exceedingly able argumentation. Those who favored imposing a restriction upon Missouri argued, plausibly enough, that as Congress was given the power to admit new States, so it was fully warranted in exercising discretion and refusing to admit. Precedents existed for imposing restrictions. Three States carved out of the Northwest Territory had been admitted on condition that their constitutions should not be repugnant to the sixth article of the Ordinance of 1787. The State of Louisiana had been admitted under explicit conditions. It was fully competent for Congress, by virtue of its authority over Territories, to regulate all the stages in the process of framing a constitution, and then to give or to withhold its approval.

The most brilliant argument on the other side was made by William Pinkney, of Maryland. Conceding that the power of Congress was discretionary, he insisted that Congress might not exact terms which would interfere with the results to be accomplished. "What, then," he asked, "is the professed result? To admit a State into this Union. What is that Union? . . . An equal Union between parties equally sovereign. . . . It is into that Union that a new State is

to come. By acceding to it the new State is placed on the same footing with the original States. . . . If it comes in shorn of its beams — crippled and disparaged beyond the original States — it is not into the original Union that it comes. . . . The first was a Union *inter pares;* this is a Union between *disparates*, between giants and a dwarf, between power and feebleness, between full proportioned sovereignties and a miserable image of power."

Yet there were Senators and Representatives from the North who would not be diverted from the discussion of the larger sectional and ethical issues involved in the extension of slavery. Chief among these was Rufus King, who then represented New York in the Senate. His cogent arguments made a profound impression. "The great slaveholders in the House," Adams wrote in his journal, "gnawed their lips and clenched their fists as they heard him."

Meantime, a joint committee of conference was endeavoring to reconcile the differences between the House and the Senate. The House was put at a disadvantage by the approach of March 4 — when the consent of Massachusetts to the admission of Maine would expire. It was finally agreed that the Senate should pass the bill admitting Maine as a separate measure, while the House should accept the Missouri Bill with the Thomas amendment. Missouri, in short, was to come in as a slave State, but slavery was forever prohibited in the rest of the Louisiana Purchase north of her southern boundary. An analysis of the voting in the House of Representatives reveals no clear-cut sectional divisions,


House Vote on the Missouri Compromise
March 2, 1820
Scale of Miles
0 100 200 300
For
Against
Figures indicate vote by states
90° 85° 80° 75° 70° 65°
50° 45° 40° 35° 30° 25°
90° Longitude West 85° from Greenwich 80° 75°

though it forecasts a time when slavery might split parties along sectional lines. In New England and the Middle States public opinion had not yet crystallized into inflexible opposition to the spread of slavery; but the Northwest was distinctly in favor of a restriction upon Missouri. The Southwest and the South were a unit in desiring the admission of Missouri as a slave State.

In the fall of 1820, the Missouri question in another form returned to vex Congress. When the constitution of the State was presented to Congress, it was found to contain a clause which excluded free negroes. Again the two houses locked horns. Passions rose again. The work of the preceding session seemed about to be undone. But under the persuasive leadership of Henry Clay, a joint committee elaborated a resolution which was acceptable to both houses. Missouri was to be admitted on the express condition that the offending clause in her constitution should never be construed so as to authorize the passing of any law by which any citizen of any of the States of the Union should be deprived of his privileges and immunities under the Federal Constitution. The legislature of Missouri was to give its solemn consent to this fundamental condition. Then, and not until then, the President was to declare Missouri a member of the Union. The State complied with the requirement, though in the same breath protesting that all this was an empty form, since Congress could not thus bind a State. On August 10, 1821, President Monroe declared Missouri a State of the Union.

In the midst of this exciting controversy, Monroe was reëlected President. Nowhere but in Pennsylvania was there any serious opposition. Old distinctions of party had so far disappeared that the venerable ex-President John Adams was chosen as a presidential elector in Massachusetts, and voted with his fourteen colleagues — who were half Federalists and half Democrats — for James Monroe. In the electoral count Monroe lacked only a single vote of a unanimous election.

When the electoral vote was about to be counted, an embarrassing question arose with regard to the vote of Missouri. As the State had not yet complied with the condition imposed by Congress, its right to vote was challenged. Again Clay appeared in his rôle of compromiser. The delicate question was adroitly avoided by having the President of the Senate announce the electoral vote with and without the votes of Missouri. At last the Missouri question was disposed of; but words had been uttered which could not be recalled; and wounds had been inflicted which left scars. The South could never quite forget that it had been charged with conniving at crime in maintaining slavery. "You have kindled a fire," said Cobb, of Georgia, to Tallmadge, "which all the waters of the ocean cannot put out, which seas of blood only can extinguish."

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CHAPTER XVI

THE NATIONAL AWAKENING

THERE is a measure of truth in speaking of the War of 1812 as a second war of independence. In throwing off the shackles of British commercial ascendency, American society experienced much the same sense of elation and liberation as the peoples of Europe who contemporaneously rose in their might against Napoleon and asserted their right to independent national existence. The war was followed in the United States by an expansion of the vital forces of the nation in all directions. The earliest manifestations of this new national consciousness, however, were characteristically boisterous. An English traveler, who visited the United States soon after the war, found every man, woman, and child talking about the Guerrière, the Java, the Macedonian, the Frolic, Lake Erie, Lake Champlain, and the "vast inferiority of British sailors and soldiers to the true-blooded Yankees." The events of the war were commemorated in songs which this Briton declared — and no doubt truthfully — to be "frothy, senseless bombast." But whatever limitations of culture were disclosed by this outburst of national conceit, no one could doubt for an instant that an exuberant vitality was coursing through the veins of the nation.

It was a fair question, however, whether this na-

tional feeling would find expression in any permanent literary form. A literature of its own America did not possess: every one with literary tastes was forced to this humiliating admission. Writing from Berlin in 1801, John Quincy Adams hailed the first number of Dennie's *Port Folio* with delight. "The object," he declared, "is noble. It is to take off that foul stain of literary barbarism which has so long exposed our country to the reproach of strangers and to the derision of our enemies." But the periodical had a very limited circle of readers, and its literary merits were slight. The *Anthology and Boston Review*, founded in 1805, had a wider influence upon letters in America; but it is memorable chiefly as the forerunner of the *North American Review*, modeled upon the English quarterlies, which was first published by William Tudor, in the year 1815, at Boston.

The publication of American books at this time was a hazardous enterprise. "The successful booksellers of the country," wrote one who recalled his own experiences in the book trade, "were for the most part the mere reproducers and sellers of English books." Yet American publishers often showed commendable enterprise. In 1817, Byron's *Manfred* was received, printed, and published at Philadelphia in a single day. Walter Scott, Moore, Miss Edgeworth, Miss Porter, and Lord Byron were the favorite British novelists and poets whose writings were reprinted in America. Among the American publications advertised by booksellers, were sermons, geographies, and schoolbooks; but rarely any pro-

ductions which belonged to the category termed by contemporaries *belles-lettres*.

The slender literary product of the United States from 1815 to 1830 is contained in magazines rather than in books. Prose and verse which could never have found a publisher separately appeared in periodicals of every description. Most of these were ephemeral publications. The more serious reviews, like the *American Biblical Repository*, the *American Law Journal*, and the religious reviews, had a longer life; but the lighter magazines, like the *Ladies' Literary Cabinet*, the *Young Ladies' Parental Mentor*, and the *Casket: or Flowers of Literature, Wit, and Sentiment*, rose and fell on the fickle tide of public taste. Even the West had its magazines. Lexington, Kentucky, which disputed with Cincinnati the proud title, "Athens of the West," published the *Western Review*, one number of which contained a review of *Don Juan* within six weeks after the poem was published in England.

In the September number of the *North American Review*, in 1817, appeared an original poem of such merit as to mark an era in the history of American verse. There was in William Cullen Bryant's *Thanatopsis*, it is true, no such youthful exuberance of feeling as the first stirrings of poetic genius in a new world might be expected to exhibit. The sense of refined form seemed almost un-American; yet there are lines in the poem which suggest the primeval background of American life and its influence upon the American mind. In 1819 appeared Washington Irving's *Sketch-Book* — the first American book

which was widely read in England; and in 1821, Cooper published *The Spy*, which was the first to win favor on the Continent. Both Cooper and Irving were more or less conscious imitators of English prose writers, the one of Scott and the other of Addison; and they lacked consequently that originality which critics have always demanded as the hall-mark of a genuinely native art. It is easy to forget, however, that the Americans were not a primitive people. They were folk with a literary inheritance, of which albeit they often showed little knowledge. It was not for them to invent new forms, but to press new wine into old bottles. Of Irving, moreover, it should be said that he drew freely upon a vein of delicious humor, as in his *Knickerbocker History of New York*, which may be truly characterized as American.

The annals of American art in these years are even more bare. Benjamin West, to be sure, was born in Pennsylvania, but he achieved eminence in England. That he could succeed Sir Joshua Reynolds as President of the Royal Academy was a tribute to his fame, but equally convincing proof that he had ceased to be identified with the land of his nativity. Gilbert Stuart owed much to West, but his return to America in 1792 saved him from complete subservience to English models. As a portrait painter he developed power and individuality. Posterity may well be grateful that the portraits of Washington, Jefferson, and Madison were painted with fidelity to nature as Stuart saw it, rather than in the grandiose manner of West. Two other names,

Malbone and Allston, deserve brief mention. The one achieved some distinction as a painter of miniatures; the other is remembered both as artist and man of letters in the literary circle which was forming about Boston. The name of Jonathan Trumbull completes the list of American artists. What David was to the great actors in the revolutionary drama in France, Trumbull was to the notable characters of the American Revolution. In his conception of his themes he was perhaps the most genuinely American painter of his time.

In the pages of his autobiography, Trumbull recounts an interview with his father which may take the place of any further comment on the dearth of artistic feeling in the United States. The young man was arguing passionately for his vocation. The father, a typical Yankee, listened with commendable patience, and complimented the lad when he had finished. "'But,' added he, 'you must give me leave to say, that you appear to have overlooked, or forgotten, one very important point in your case.' 'Pray, sir,' I rejoined, 'what was that?' 'You appear to forget, sir, that *Connecticut is not Athens*'; and with this pithy remark, he bowed and withdrew, and nevermore opened his lips upon the subject. How often have those few impressive words recurred to my memory."

The names of Bryant, Cooper, and Irving are linked with the city of New York which enjoyed for a brief time that primacy in the world of American letters which it was fast acquiring in commerce. The center of literary and scholarly activity in the next

generation was Boston, where the New England renaissance began. In this revival of letters Harvard College had a notable part. In 1806, John Quincy Adams was appointed Professor of Rhetoric and gave a course of lectures which moulded the taste of that school of orators to which Edward Everett belonged — a school of oratory which found its models in Demosthenes and Cicero. Everett became Professor of Greek in 1815; and George Ticknor, Professor of Belles-Lettres in 1816. Prescott graduated in 1814, Palfrey in 1815, and George Bancroft in 1817, — all three to add to American historiography works of enduring excellence. In 1817, young Ralph Waldo Emerson entered college.

It was Boston, however, rather than Harvard College, which created the atmosphere that these young scholars — all from Boston families — breathed: for the Athenæum, the American School of Arts and Sciences, and the Massachusetts Historical Society had begun to exercise an increasing influence on the younger generation. Harvard College, like all colleges of the day, was hardly more than a species of higher academy whither boys went at a tender age to continue their study of the classics and mathematics, and incidentally to cultivate rhetoric and *belles-lettres*.

The liberation of the American mind from time-honored traditions and conventions appeared markedly in the ecclesiastical revolts and religious revivals of the age. Unitarianism took its rise quite as much in protest against the teaching of Calvinism, that man was brought into the world hopelessly depraved, as

against the orthodox conception of Christ's nature. The definite separation of Unitarianism from Congregationalism dates from 1815 when William E. Channing published his memorable letter to the Reverend Samuel C. Thacher. The writings of Buckminster, Channing, and other theological liberals have a distinct place in the annals of American intellectual life. Universalism also took its rise at this time and spread with remarkable rapidity under the lead of Hosea Ballou. In western Pennsylvania and Virginia, the Campbells, father and son, led a departure from the established Presbyterian order. The Society of Friends was also rent by the teachings of Elias Hicks.

Revivals had been a recurring feature of New England religious life since the latter years of the seventeenth century. That they stimulated many forms of religious activity appears in the annals of missionary enterprises at home and abroad. In 1810 the American Board of Foreign Missions and in 1814 the American Baptist Missionary Union were founded. In 1812 four young missionaries went out to India; and five years later other devoted young men began their labors among the Cherokees and Choctaws of the Southwest. There is something at once heroic and pathetic in the humanitarian zeal of a people, whom Europeans still regarded with disdain, to carry to the remote ends of the earth a Christian civilization which they had themselves hardly attained. But an incomprehensible idealism has from first to last been interwoven in the texture of American character.

After the cessation of European wars the United States stood singularly aloof from the Old World, yet in the affairs of South America they did not cease to take a lively interest. The successive revolutions by which the provinces of the Rio de la Plata, Chili, Peru, Colombia, Brazil, and Mexico asserted their independence woke a thrill in the people of the United States, for they thought they saw the events of their own revolution repeated in the exploits of San Martín and Bolívar. To the imagination of Henry Clay, this was a sublime spectacle — "eighteen millions of people struggling to burst their chains and be free." He would have had the United States recognize these sister republics and join hands with them in forming an American system independent of Europe. And when the Administration hesitated, he exclaimed: "We look too much abroad. Let us break these commercial and political fetters; let us no longer watch the nod of any European politician; let us become real and true Americans, and place ourselves at the head of the American system."

The conception of an American system did not originate in the ardent mind of Henry Clay. It was as old as the Union itself. Foreign encroachment had been feared from the very birth of the nation. "You are afraid of being made the tool of the powers of Europe," said Richard Oswald to John Adams while peace negotiations were pending at Paris. "Indeed I am," rejoined Adams. "What powers?" asked Oswald. "All of them," said Adams; "it is obvious that all the powers of Europe will be continually manœuvring with us to work us into their

real or imaginary balances of power. . . . But I think that it ought to be our rule not to meddle." Washington's refusal to enter into an alliance with France and his firm insistence upon neutrality were inspired by this same fear. Jefferson's negotiations for the purchase of New Orleans were motived by the fear that France, once in possession of the mouth of the Mississippi, would threaten the isolation of the United States and drive us into the arms of Great Britain. "Jefferson is an American," Adet once said, with rare insight, "and by that title, it is impossible for him to be sincerely our friend. *An American is the born enemy of European peoples.*"

The corollary of the principle of non-intervention was abstention on the part of the United States from the affairs of Europe. Could the United States, then, recognize the colonies of Spain as independent republics without emerging from its traditional isolation? President Monroe would have been glad to recognize the South American republics even before they had demonstrated their ability to maintain their independence; but his cool-headed Secretary of State prevailed upon him to await further evidence. It was not until 1822, indeed, that the President recommended to Congress the establishment of missions in the new republics of South America. Spain protested emphatically against this action; but Adams, now sure of his ground, justified the action of the Administration by an appeal to facts. So long as Spain was attempting to reduce the colonies by arms, the United States had observed "the most impartial neutrality." But war had ceased, and the United

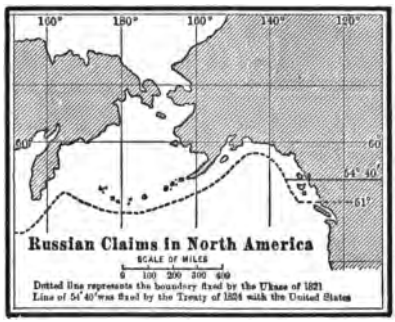
States had "yielded to an obligation of duty of the highest order, by recognizing, as independent states, nations which, after deliberately asserting their right to that character, had maintained and established it against all the resistance which had been or could be brought to oppose it."

In the year 1823, the traditional principles of American foreign policy were put to a severer test. Soon after the Congress of Vienna, that combination of the great powers was consummated which contemporaries usually but erroneously styled the Holy Alliance. Austria, Prussia, Russia, and Great Britain covenanted together to meet at fixed periods to consult upon their common interests and to consider the measures "most salutary for the repose and prosperity of nations, and for the maintenance of the peace of Europe." Three years later, France was admitted to the councils of these "self-appointed keepers of the world's peace." Innocent enough in its public professions, this association of the great powers was converted by Metternich of Austria, who had acquired a remarkable ascendency over the mind of his own sovereign and over that of the impressionable czar, into an instrument of reaction and repression, whenever and wherever the specter of revolution raised its head. Within a few years revolutionary uprisings occurred in Italy and Spain. The so-called legitimate sovereigns were driven from their thrones and constitutional governments were established. In successive congresses at Troppau and Laybach, the three powers, Austria, Russia, and Prussia, resolved to suppress these revolutionary

movements. An Austrian army was commissioned to carry out this policy of intervention, as it was termed; and the King of the Two Sicilies was restored to his uneasy throne. Neither Great Britain nor France took part in these congresses. It now remained to chastise the revolutionists of Spain. At the Congress of Verona in 1822, the representative of Great Britain openly protested against any intervention in Spain. But again the three powers, now joined by France, resolved to restore the deposed Fernando VII. Early in the following year a French army crossed the Pyrenees and entered Madrid. It was commonly believed that the restoration of the monarchy was to be followed by a reduction of the revolted colonies and a restoration of the Spanish colonial empire.

It was at this juncture that Canning, who had become the head of the British ministry, protested against the policy of intervention and sought for ways and means to make the protest effective. The one power whose traditions of liberty and whose interests in this particular seemed to be identical with those of Great Britain was the United States. In truth, their interests were far from being identical. Two years before, in a conversation with the British minister at Washington, the Secretary of State, in his most uncompromising manner, had challenged the right of Great Britain to the valley of the Columbia River or to any part of the Pacific Coast. And so recently as April of this critical year 1823, Adams had taken alarm at the appearance of a British naval force off the coast of Cuba and had warned the Gov-

ernment at Madrid that "the transfer of Cuba to Great Britain would be an event unpropitious to the interests of the United States." At the same time Adams stated his conviction that within half a century the annexation of Cuba to the United States would be "indispensable to the continuance of the Union itself." Coupled with this prophecy was the equally frank assurance that the United States desired to have Cuba and Porto Rico "continue attached to Spain" — for the present.



It was in midsummer of this year, too, that Adams protested against the ukase of the czar which had asserted the claim of Russia to the Pacific Coast as far south as the fifty-first degree, and to a maritime jurisdiction one hundred Italian miles from the coast. Adams records in his diary that he told the Russian minister "that we should contest the right of Russia to *any* territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments." The time had come when the United States was bound to take more than a sentimental interest in the affairs of Spanish America. The disintegration of the Spanish colonial

empire not only invited the intervention of European powers in the internal affairs of the new republics, but also exposed portions of the North American continent to their aggressions.

On several occasions Canning conferred with Richard Rush, the minister of the United States resident in London, to ascertain whether his Government would join Great Britain in a public declaration against any "forcible enterprise for reducing the colonies to subjugation on behalf of or in the name of Spain; or which meditates the acquisition of any part of them to itself, by cession or by conquest." England had no designs upon the distant colonies of Spain, Canning asseverated; at the same time it "could not see any part of them transferred to any other power with indifference." Not trusting implicitly in Canning's altruism, Rush wisely suggested that Great Britain should first recognize the South American republics as a preliminary to a joint declaration. To this Canning would not commit himself; and Rush would not assume responsibility for a public declaration on any other conditions.

On receiving the dispatches from Rush recounting these interesting conferences, President Monroe took counsel with the two Virginia oracles, Jefferson and Madison. Both advised him to meet Canning's overtures and to make common cause with Great Britain — the one nation, as Jefferson put it, which could prevent America from having an independent system and which now offered "to lead, aid, and accompany us in it." Monroe was disposed to follow this advice. He not only drafted a message to Congress upon

these lines, but he went further and urged the recognition of Greek independence in a way which departed widely from the traditional aloofness which earlier Presidents had maintained in matters of European concern. On the other hand, Adams was decidedly of the opinion that Canning's invitation should be declined. He did not wish the country to appear "as a cock-boat in the wake of the British man-of-war." Moreover, Adams was considerably alarmed at the reactionary principles which the Russian ministry had avowed in a communication addressed to the minister at Washington. He urged the President to seize the occasion to make an explicit declaration of American principles. "The ground I wish to take," said he, "is that of earnest remonstrance against the interference of European powers by force with South America, but to disclaim all interference on our part with Europe; to make an American cause and adhere inflexibly to that."

Yielding to his contentious Secretary of State, President Monroe redrafted his message to Congress. In its final form, December 2, 1823, this famous state paper contained the essential principles of what has come to be known as the Monroe Doctrine. It was asserted "as a general principle in which the rights and interests of the United States are involved that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers." The message expressly disclaimed any purpose to interfere in European politics; but respecting the affairs

of the Western hemisphere a direct and immediate interest was frankly avowed. "The political system of the allied powers is essentially different in this respect from that of America." "We should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States."

The immediate effects of the message are not easily traced. It is not clear, even, that the favorable treaty made with Russia in the following year was the outcome of what Canning somewhat contemptuously styled "the new Doctrine of the President." Russia, it is true, agreed to waive her claims below fifty-four degrees forty minutes and to exclusive jurisdiction in Bering Sea; but the conflicting claims of England in the Northwest remained, and Canning predicted that England would "have a squabble with the Yankees yet in and about those regions."

Later generations have read strange meanings into the message of President Monroe. Even contemporaries were not clear as to its import. Interpreted in the light of its origin, it was a candid announcement

that the United States did not purpose to meddle in the affairs of European states or of their existing dependencies, and a protest against the increase of power of European states in America either by intervention or by new colonization.

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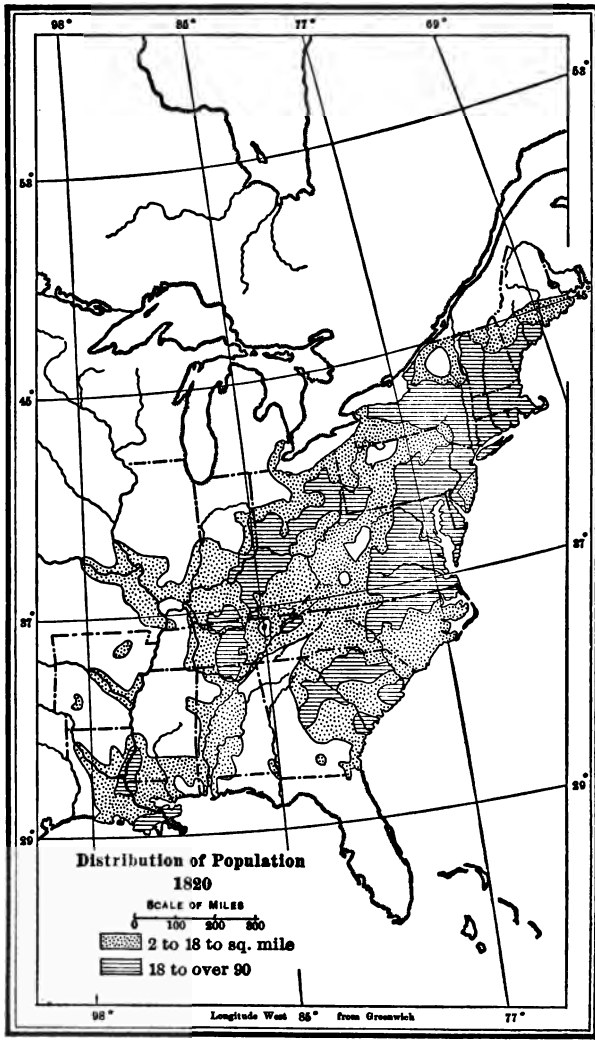
CHAPTER XVII

THE NEW DEMOCRACY

By the year 1824, the West had become a section to be reckoned with by those who were calculating their chances in the presidential race. Since the war six Western States had been admitted into the Union. The population west of the Alleghanies had increased by nearly a million and a half within a decade. The relative importance of this new section appears in the census returns. In 1790, less than six per cent of the total population lived west of the Alleghanies; in 1820, nearly thirty-two per cent were domiciled in this vast region. In the National Legislature the West had acquired notable weight. By the apportionment of 1822, it had forty-seven out of two hundred and thirteen members of the House; in the Senate, eighteen out of forty-eight. But these figures do not tell the whole tale. As Professor Turner has well said, rightly to estimate the weight of Western population we must add the people of western New York and of the interior counties of Pennsylvania, and of the trans-Alleghany counties of Virginia, as well as the people of the back-country of Maine, New Hampshire, Vermont, North Carolina, and Georgia. "All of these regions were to be influenced by the ideals of democratic rule which were springing up in the Mississippi Valley."

Economic conditions bred a democratic society in


98°
85°
77°
69°
53°
45°
37°
29°
Distribution of Population
1820
Scale of Miles
0 100 200 300
2 to 18 to sq. mile
18 to over 90
Longitude West 85° from Greenwich

the West. What Gallatin said of Pennsylvania was true of the greater West: "An equal distribution of property made every individual independent and produced a true and real equality." The basal characteristic of the West was individual ownership of land; and the reaction of the sense of proprietorship upon individual character was the most significant fact in the history of its population. Intense individualism and rugged self-reliance were the salient characteristics of the Westerner. So far as he reflected upon his social relations, he believed in complete social equality. In numberless instances the pioneer had migrated to escape the social inequalities and depressing conventions of older communities; and he was not minded to encourage the reproduction of these conditions in his new home. "America, then, exhibits in her social state an extraordinary phenomenon," wrote De Tocqueville in his notable study of American democracy. "Men are there seen on a greater equality in point of fortune and intellect, or, in other words, more equal in their strength, than in any other country of the world, or in any age of which history has preserved the remembrance."

Life on the frontier, where a man wrestled with the primitive forces of Nature and conquered by dint of his indomitable will, made the Westerner perhaps overconfident in his ability to deal with all obstacles in the way of human achievement and withal somewhat impatient under the restraints imposed by the more complicated social order in the older communities to the East. The sweep of the prairies and the wide horizon lines of the Middle West may have

exercised a subtle influence upon temperament. At all events, the Westerner was buoyant and optimistic, taking large views of national destiny and of the possibilities of human achievement in a democracy.

There was danger, indeed, that in cutting loose from the irritating restraints of the older communities, the people of the West would sacrifice much of the grace and many of the intellectual and spiritual refinements of an older civilization. "In this part of the American continent," observes De Tocqueville, "population has escaped the influence not only of great names and great wealth, but even of the natural aristocracy of knowledge and virtue." It seemed to two young New Englanders who traversed the vast region from the Western Reserve to New Orleans in 1813, in the interests of missionary societies, that the people were wrapped in spiritual darkness, "being ignorant, often vicious, and utterly destitute of Bibles and religious literature." The General Bible Society of the United States was founded in 1816 to dispel this irreligious gloom. Within five years this organization and its numerous auxiliaries had distributed one hundred and forty thousand Bibles and Testaments through the new States.

Yet the irreligion of the West was painted darker than it really was. Methodism had struck root where other denominations could not thrive. Its methods and organization, indeed, were peculiarly adapted to a people which could not support a settled pastor. "A sect, therefore, which marked out the region into circuits, put a rider on each and bade him cover it once a month, preaching here to-day and there to-

morrow, but returning at regular intervals to each community, provided the largest amount of religious teaching and preaching at the least expense." The Baptists, too, secured a footing in the new communities and labored effectively in creating religious ties between the old and the new sections of the country. In religion as in politics the people of the West were responsive to emotional appeals. The circuit rider, with his intense conviction of sin and his equally strong conviction of salvation through repentance, wrought great crowds in camp meetings into ecstasies of religious excitement. Odd religious sects and strange "isms" were to be found in the back-country. At New Harmony on the Wabash River were the Rappites, a sect of German peasants who came first to Pennsylvania under their leader George Rapp, and who afterward returned thither. At Zoar in Ohio was the Separatist community led by Joseph Baumeler. Shaker societies were formed at many places; and Mormonism was just beginning its strange history through the revelations of Joseph Smith in western New York.

The intellectual horizon of the Western world was necessarily limited. Absorbed in the stern struggle for existence, the people had no leisure and no heart to enjoy the finer aspects of life. Education was a luxury which only the prosperous might possess. The purpose to make elementary education a public charge developed tardily. Outside of New England, indeed, a public school system did not exist. Throughout the older portions of the West the traveler might find academies and so-called colleges, but none sup-

ported at public expense. The State of Indiana, it is true, entered the Union with a constitution which made it the duty of the legislature to provide, as soon as circumstances permitted, "for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be gratis, and equally open to all." But years passed before circumstances permitted the realization of this ideal. Meantime, the prosperous planters of the Southwest employed tutors for their children, and the well-to-do farmers of the Northwest paid tuition for their boys at academies. But young Abraham Lincoln had to teach himself Euclid and to cipher on the back of a wooden shovel, by the flickering embers of a log-cabin fire.

The new Commonwealths entered the Union as self-confessed democracies. In all the States formed after the War of 1812, with one exception, property qualifications such as prevailed in the older States were swept away and the right to vote was accorded to every adult white male. In Mississippi alone there was the additional qualification that a voter should be enrolled in the militia or have paid a state or county tax. Everywhere, too, the principle was accepted that representation should be based upon population and not upon property. The men who framed these new constitutions believed that they were establishing the rule of the people. It was, indeed, unthinkable that, believing themselves equal in all other respects, they should not accept the principle of political equality and popular sovereignty.

There is evidence in these new constitutions, how-

ever, that the people placed less reliance in their legislative bodies than did the people of the Revolutionary era. Instead of general grants of legislative power, there are specific prohibitions and positive injunctions. Important limitations are imposed upon the form and mode of legislation. It is clear, too, that fear of an over-strong executive had given way to a belief in the necessity of having a stronger countervailing influence, capable of checking the legislative. Everywhere the governor was made elective directly by the people and given the veto power. The conviction was often expressed in constitutional conventions that the governor was peculiarly the representative of the people, a popular tribune who would protect them against the indiscretions of their legislative representatives. The extension of the elective principle to all important offices was accompanied also by a general conviction that life tenure of office is undemocratic. "Rotation in office," said Andrew Jackson, voicing a popular feeling, "is a cardinal principle of democracy."

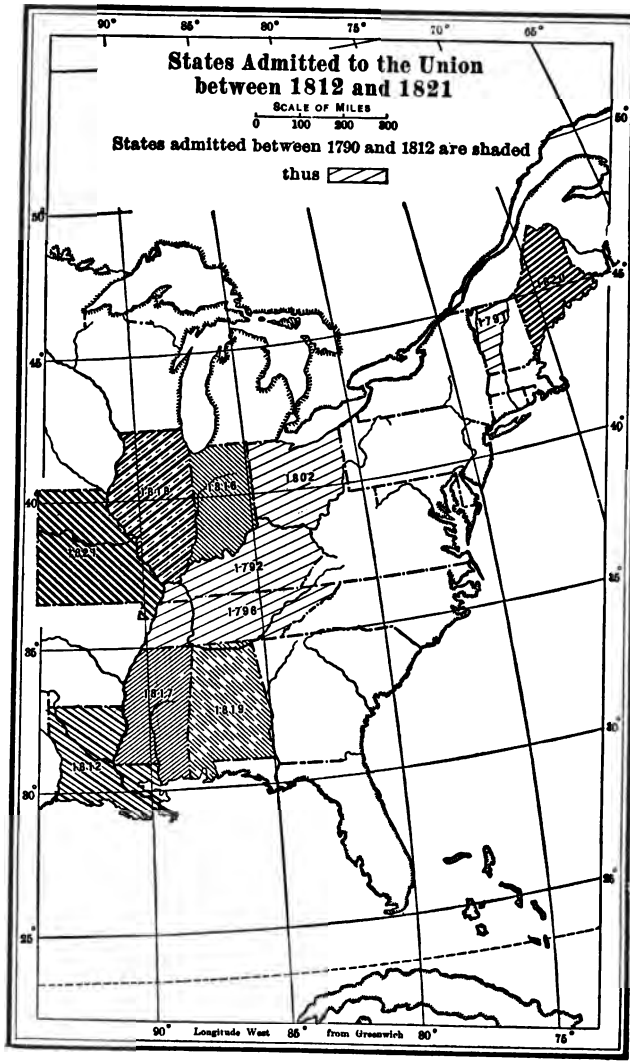
The spirit of Western democracy leavened also the older States. The people of Maine, breaking away from Massachusetts and her ancient ideals, boldly declared for manhood suffrage in their new constitution. Connecticut adopted a constitution in 1818 to replace the old charter, and dissolved the old union of Church and State by declaring that no preference should be given by law to any Christian sect or mode of worship. At the same time Connecticut extended the suffrage to all who served in the militia or paid a state tax. New York in the constitution of 1821

and Massachusetts by a constitutional amendment in the same year abandoned the old property qualifications for voting.

In both Massachusetts and New York, conservative men like Chancellor Kent and Daniel Webster frankly avowed their apprehensions of universal suffrage. "The tendency of universal suffrage," said Kent in the New York convention, "is to jeopardize the rights of property, and the principles of liberty." He held society to be an association for the protection of property as well as of life, "and the individual who contributes only one cent to the common stock ought not to have the same power and influence in directing the property concerns of the partnership as he who contributes his thousands."

The democratic movement affected not only the formal organization of State Governments, but also the machinery and methods of political parties. In the Northern States there was increasing dissatisfaction with the practice of nominating candidates for office by legislative caucus. The rank and file of the parties were no longer willing to submit blindly to the dictation of leaders. In deference to party voters in districts which were not represented by men of their political faith, the leaders of the respective parties now found it expedient to summon special delegates to their party conclaves, in order to give a more truly representative character to the organization of party. The legislative caucus, in short, gave way to the mixed caucus.

But the old vice remained. The selection of candidates for office was still made by those who had no


States Admitted to the Union
between 1812 and 1821
SCALE OF MILES
0 100 200 300
States admitted between 1790 and 1812 are shaded
thus
1791
1820
1802
1818
1816
1821
1792
1796
1817
1819
1812
90° 85° 80° 75° 70° 65°
50° 45° 40° 35° 30° 25°
90° Longitude West 85° from Greenwich 80° 75°

mandate to act for the party except in a legislative capacity. If the voters of the party were in truth the source of authority within the party, then a means had to be devised of ascertaining their will. The democratic principle, in short, had to be applied to party. In response to this feeling, mass meetings and irregular conventions were held; but these methods of securing an expression of party opinion were only transitional. Indeed, so long as the means of communication were defective, popular gatherings were necessarily poorly attended. The next step in the democratization of party organization could only be taken when the barriers of space were overcome by the application of the steam engine to transportation. The nominating delegate convention waited on the development of transportation.

Much the same popular hostility was directed against the congressional caucus. Candidates for the presidential nomination were not blind to this movement, and for the most part they sought other means of promoting their chances. Monroe had hardly entered upon his second term when state legislative caucuses began to nominate favorite sons. In 1821, the legislature of South Carolina put forward the name of William Lowndes, and upon his death named John C. Calhoun as its candidate for the Presidency. In 1822, the legislature of Tennessee presented the name of Andrew Jackson, "the soldier, the statesman, the honest man," to the consideration of the people of the United States. In the same year Republican members of the legislature of Kentucky recommended Henry Clay "as a suitable person to

succeed James Monroe as President." A "joint meeting of the Republican members of the Massachusetts legislature and of Republican delegates from the various towns of the Commonwealth not represented in the legislature" nominated John Quincy Adams for the Presidency in January, 1823. And finally, illustrative of the varied methods in use and of the strange vicissitudes of politics at this time, a public gathering or mass meeting at Fredericksburg, Virginia, in March, 1824, nominated Adams for President and Jackson for Vice-President.

A series of resolutions passed by the legislature of Tennessee in 1823 called attention in no uncertain language to the shortcomings of the congressional caucus and called for its overthrow. A canvass of the members of Congress showed that one hundred and eighty-one out of two hundred and sixty-one believed a caucus inexpedient at this time. Nevertheless, the minority, acting in Crawford's interest, took their courage in both hands and held a caucus on February 14, 1824. Sixty-four out of sixty-eight votes were cast for William H. Crawford, who thus became by all precedents the "regular" candidate of the Republican party. This nomination and the indorsement of Jackson by the Republicans of Pennsylvania spoiled Calhoun's chances. In the spring of 1824, he allied himself with the Jackson faction by accepting the nomination for Vice-President at the hands of a state nominating convention at Harrisburg, which had put Jackson at the head of the ticket.

Such issues as were discoverable in the presiden-

tial contest of 1824 were formulated in the debates in Congress during the early part of the year. As the country recovered from financial depression, the question of internal improvements again forged to the front. In 1822, a bill to authorize the collection of tolls on the Cumberland Road had been vetoed by the President. In an elaborate essay Monroe set forth his views on the constitutional aspects of a policy of internal improvements. Congress might appropriate money, he admitted, but it might not undertake the actual construction of national works nor assume jurisdiction over them. For the moment the drift toward a larger participation of the National Government in internal improvements was stayed. Two years later, however, Congress authorized the President to institute surveys for such roads and canals as he believed to be needed for commerce and military defense. The vote on this bill shows that the source of opposition to internal improvements was chiefly in the Northeast, in Virginia, and in the Carolinas. The West and Southwest, with Pennsylvania, Maryland, and New Jersey, were a unit in support of the general survey.

No one pleaded more eloquently for a larger conception of the functions of the National Government than Clay. No one voiced the aspirations of his section more faithfully. He called the attention of his hearers to provisions made for coast surveys and lighthouses on the Atlantic seaboard and deplored the neglect of the great interior of the country. "A new world has come into being since the Constitution was adopted," he exclaimed. "Are the narrow,

limited necessities of the old thirteen States, of, indeed, parts only of the old thirteen States as they existed at the formation of the present Constitution, forever to remain the rule of its interpretation?" Of the other presidential candidates, Jackson voted in the Senate for the general survey bill; and Adams left no doubt in the public mind that he did not reflect the narrow views of his section on this issue. Crawford felt the constitutional scruples which were everywhere being voiced in the South, and followed the old expedient of advocating a constitutional amendment to sanction national internal improvements.

The Tariff Act of 1824 also entered somewhat into the presidential campaign. The failure of the protectionists to secure a higher tariff in 1820 had been followed by other efforts to secure congressional action; but none succeeded until Clay was again elected Speaker of the House and thrust the matter into the foreground of discussion. Clay dwelt eloquently upon the loss of the foreign market for agricultural products and upon the consequent widespread distress. To his mind the remedy was the establishment of an American market by fostering manufactures. That such a policy would involve a clash of sectional interests, he did not deny; but he believed that "reconciliation by mutual concessions" could be effected and a genuine "American system" be brought into existence.

The tariff bill presented in 1824 was avowedly a protective measure. Among lesser changes, increased duties were proposed on iron, lead, wool, hemp, cotton bagging, and cotton and woolen goods. At once

90°
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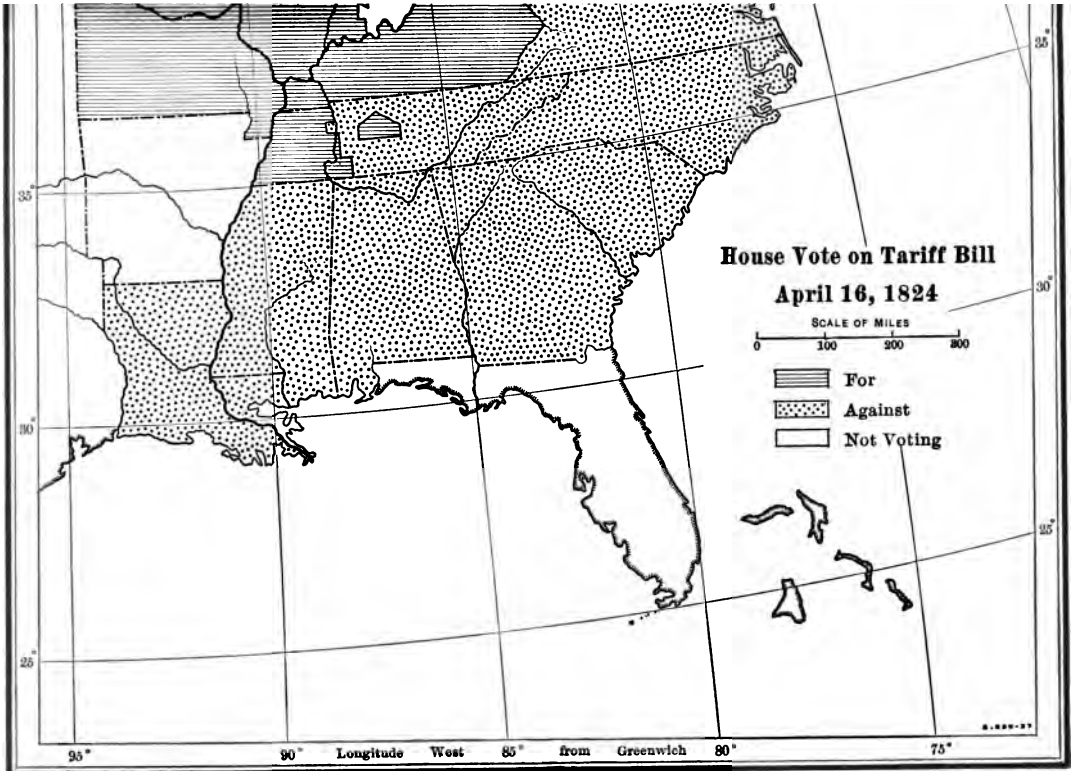
House Vote on Tariff Bill
April 16, 1824
SCALE OF MILES
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100
200
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For
Against
Not Voting
35°
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Longitude West
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from Greenwich
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the clash of sectional interests began. New England shippers protested against the duty on hemp, which they needed for cordage; and Southern planters made common cause with them on this item, because the cheap bagging which they used for baling their cotton was made of coarse hemp. For the same reason the maritime sections of New England opposed the duty on iron. For precisely opposite reasons, Kentucky clamored for the protection of her hemp-growers, and Pennsylvania, for the protection of her iron-workers. It was well understood that the cotton industry was established and needed no protection; nevertheless, the minimum duty on cotton fabrics was raised. The increased duty on woolens, however, was offset by an increased duty on raw wool, so that the woolen manufacturers profited little by the change of rate. A proposal to apply to woolens the minimum principle which had been extended to cottons in 1816 was defeated by the opposition of the South. Any increase in the cost of cheap woolen goods was bound to enhance the cost of clothing the slaves. On the other hand, the representatives of the great grain-growing and farming States of New York, New Jersey, and Pennsylvania, together with the States of the Ohio Valley, were almost unanimously in favor of the proposed bill. When the bill came to a vote in the House on April 16, 1824, only nine of the combined ninety-five votes of these sections were cast in the negative. Equally emphatic was the protest of the South and Southwest: only six out of seventy-six Representatives favored the bill. New England by its divided vote revealed the internal con-

flict between the commercial and manufacturing interests. The bill passed both houses of Congress by small majorities and received the signature of the President.

Of the presidential candidates, only one spoke with uncertain sound on the tariff issue. Clay was the outspoken advocate of a far-reaching American system; Adams thought the tariff of 1824 a fair compromise; Jackson, properly coached by his intimates, put himself on record as a supporter of a protective policy to create a home market; only Crawford, representative of the peculiar interests of the South and candidate for Northern support, felt the impossibility of harmonizing the conflicting interests of his followers by a clear-cut and explicit utterance on the tariff.

With so many candidates in the field, it was difficult to forecast the outcome of the presidential campaign. Even if there had been a pronounced popular drift toward any candidate, the result would have remained in doubt until the six States which still gave the choice of electors to their legislatures had completed the complicated electoral process. There was a strong likelihood, however, that the election would go to the House of Representatives. As the choice would then be confined to the three candidates having the highest vote, there was not a little bargaining in the States where the legislatures chose the electors. The completed returns gave Jackson 99 electoral votes; Adams, 84; Crawford, 41; and Clay, 37. Calhoun was elected Vice-President by more than two thirds of the electoral vote. The House, therefore, as wiseacres had foretold, was called upon for

the second time to decide a contested presidential election.

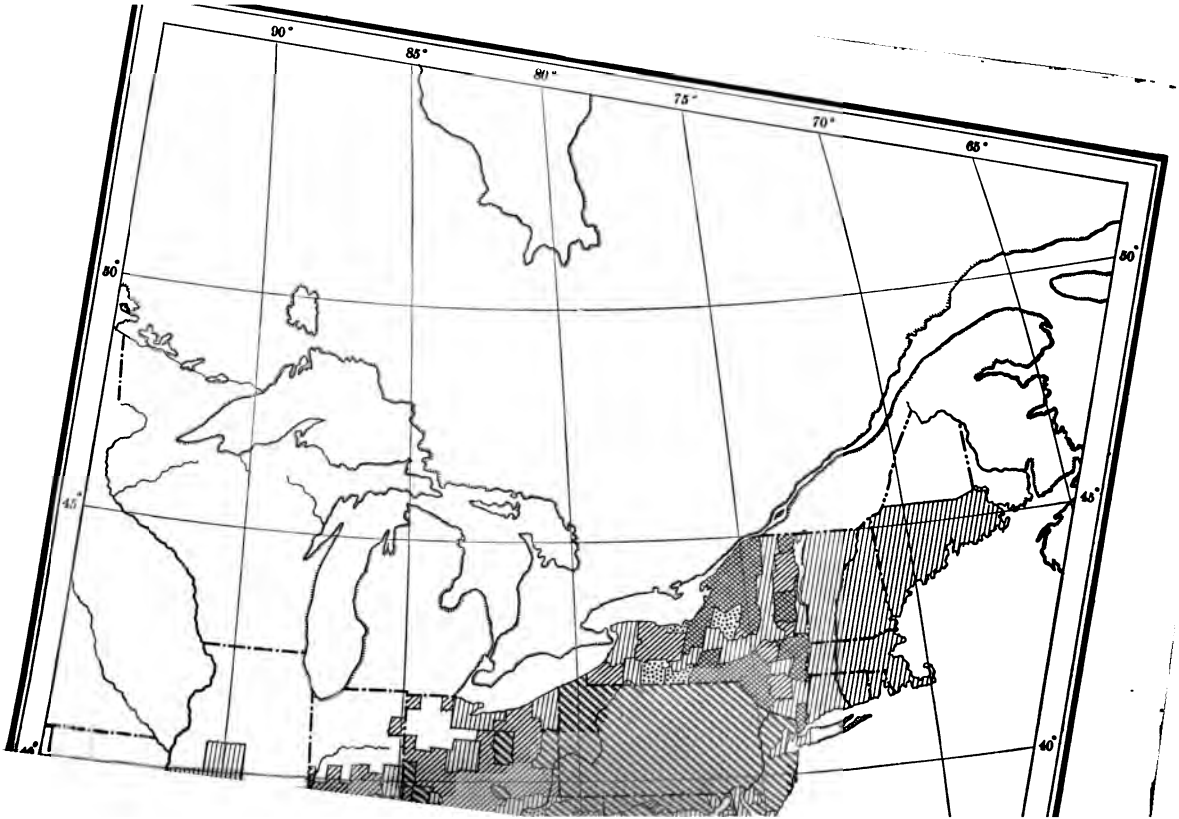
The position of Clay was one of unenviable distinction and power. He could not be elected President, but he could, it was believed, determine which of his rivals should have the coveted office. His own State favored Jackson as a second choice; but Clay wrote to a friend that he could not consider the killing of twenty-five hundred Englishmen at New Orleans proved the fitness of Jackson for the chief civil magistracy. Crawford was personally less objectionable to Clay; but he had suffered a paralytic stroke and his health was precarious. Besides, Crawford had opposed some of the policies which Clay had most at heart. For years Clay had been a bitter opponent of Adams; yet after all was said, he was bound to admit that his interests would be best served by an alliance with this stiff-necked New Englander. At an early date, therefore, he determined to throw his support to Adams.

For weeks the capital was enveloped in an atmosphere of intrigue. Clay was courted by all factions. The possibility of securing his support was a standing temptation to wire-pullers. Even Adams wrote in his diary, "*Incedo super ignes*" (I walk over fires). When Clay announced positively, on January 24, that he and his friends would support Adams, a storm of passionate denunciation broke upon him. An anonymous letter appeared in a Philadelphia newspaper, charging that friends of Adams had offered Clay the Secretaryship of State in return for his support, and that friends of Clay had reported the offer

to friends of Jackson, with the intimation that Clay would support the general on similar terms. When the friends of Jackson spurned these overtures, Clay sold out to Adams. With quite unnecessary heat Clay branded the author of this letter as "a base and infamous calumniator, a dastard, and a liar." His first instinct was to challenge the author whoever he might be; but when Representative George Kremer, an odd character who was chiefly conspicuous by reason of the leopard-skin coat which he wore avowed himself the writer of the offensive letter, Clay wisely concluded not to make himself ridiculous by an affair of honor with this Gil Blas. He demanded a congressional investigation instead.

While this investigation of the alleged bargain between Adams and Clay was pending, the House proceeded to the election of a President. On the first ballot, Adams received the votes of thirteen States, while Jackson was the choice of seven States, and Crawford of four. New England, New York, Louisiana, Maryland, and the States of the Northwest, except Indiana, supported Adams. Combined with these were now Missouri and Kentucky, which had voted for Clay. Jackson received the votes of the Southwest, together with those of Pennsylvania, New Jersey, Indiana, and South Carolina. Crawford was supported by Georgia, North Carolina, Virginia, and Delaware. Two days later the President-elect announced that he had invited Henry Clay to be his Secretary of State. After some hesitation, Clay accepted the post.

The cry of corruption is a recurrent note in the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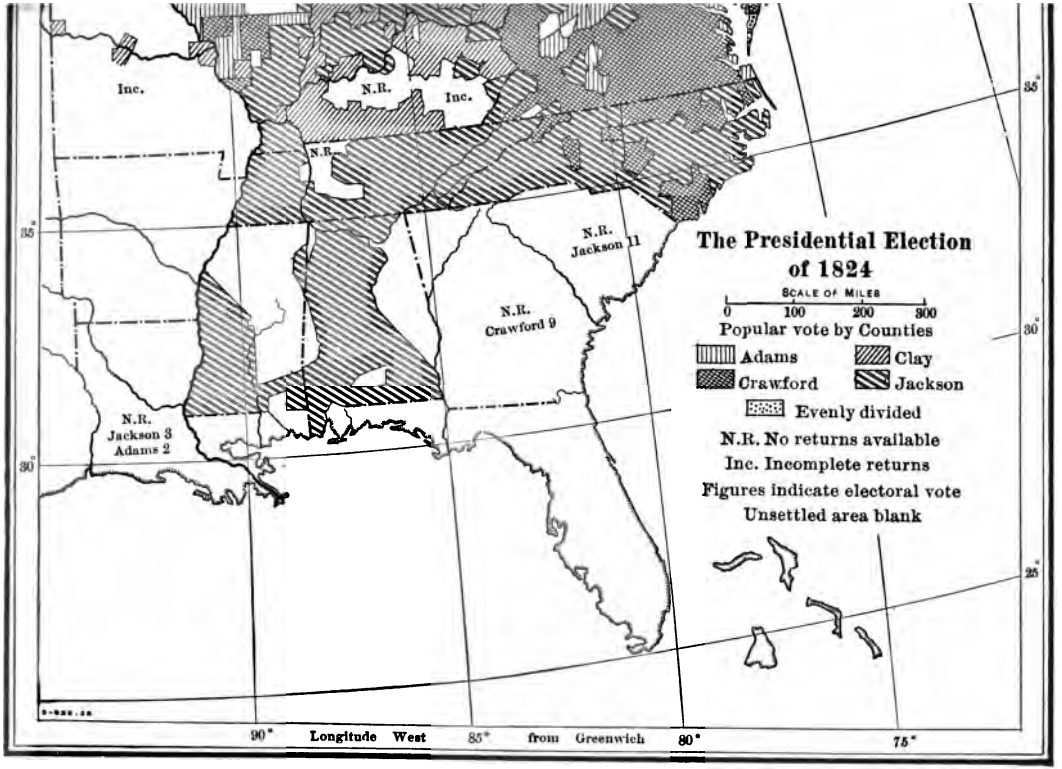
Inc.
N.R.
Inc.
N.R.
N.R.
Jackson 11
N.R.
Crawford 9
N.R.
Jackson 3
Adams 2
The Presidential Election
of 1824
SCALE OF MILES
0 100 200 300
Popular vote by Counties
Adams
Clay
Crawford
Jackson
Evenly divided
N.R. No returns available
Inc. Incomplete returns
Figures indicate electoral vote
Unsettled area blank
35°
30°
25°
90°
Longitude West
85°
from Greenwich
80°
75°

history of democracies. The American democracy is no exception. With most of the charges of corruption, the historian has little concern; but the bargain and corruption cry of 1825 has a historical significance. The falsity of the charge against Clay has been proved as nearly as a negative can be. Adams may not have been above the uncongenial task of soliciting votes, but he kept safely within the moral domain which his conscience marked out. The motive which governed his appointment of Clay as Secretary of State is stated frankly in a letter to Monroe, two days after the election by the House. He considered the appointment "due to his talents and services to the western section of the Union, whence he comes, and to the confidence in me manifested by their delegations." Upon one individual these considerations made no impression: Andrew Jackson left the capital with wrath in his soul. He felt that he had been defrauded by a corrupt bargain. From this time on his hand was against Clay, — that "Judas of the West," as he afterward called him, — who had conspired to "impair the pure principles of our republican institutions" and to "prostrate that fundamental maxim which maintains the supremacy of the people's will."

Years after the events of 1824–25, the belief of Jackson that the will of the people had been defeated found classic expression in Thomas H. Benton's *Thirty Years' View of Congress*. What Benton termed "the Demos Krateo principle" was thoroughly in accord with the spirit of the new democracy, but it rested upon an entire misunder-

standing of the Constitution. A direct popular election of the President was never contemplated by the framers of the Constitution. It is impossible to find in either the letter or the spirit of the Constitution any justification for the view that the House of Representatives is bound to elect the candidate having the highest popular vote.

What the will of the people really was in the presidential election of 1824 is by no means clear. Even in those States where presidential electors were chosen by popular vote, Jackson received less than half of the popular vote; and in many of these States the actual vote fell far below the potential. In Massachusetts, where 66,000 votes had been cast for governor the year before, only 37,000 voters took the trouble to vote for President. In Pennsylvania, which boasted of a population of over a million, less than 48,000 voted in 1824. Moreover, the six States which chose the presidential electors through their legislatures, contained one fourth of the population of the country. One fact, however, stands out with unmistakable clearness, — and it did not escape politicians like Van Buren, of New York, who had their fingers on the pulse of the people, — this martial hero from out of the West had an unprecedented vote-getting capacity. It were well to observe the Western horizon more intently.

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CHAPTER XVIII

POLITICS AND STATE RIGHTS

THE circumstances of his election made the position of President Adams one of very great difficulty. He alluded to his embarrassment in his first message to Congress. "Less possessed of your confidence in advance than any of my predecessors," said he, "I am deeply conscious of the prospect that I shall stand more and oftener in need of your indulgence." It is doubtful, however, if even he appreciated the momentum of the forces which were already combining to discredit his administration. In October, the legislature of Tennessee had again nominated Jackson for the Presidency, and he had accepted the nomination as a summons to wage war upon the forces of evil in high places. The campaign of 1828, indeed, had already begun: and it was to be a campaign of personal vindication as well as of popular rights.

Under similar circumstances most men would have made sure of the loyalty of their constitutional advisers, at least, but Adams flattered himself that he could carry on a non-partisan administration. The results were disastrous, for at least two of the Cabinet were not above using the patronage of office to further the cause of Jackson. In his laudable desire not to allow the Government to become "a perpetual and unintermitting scramble for office,"

Adams refused to make removals in the civil service on partisan grounds, yet he retained in office underlings who labored incessantly in the cause of the opposition.

Equally impolitic was the attitude of the President toward questions of public policy in his first message to Congress. Just when the opposition was in a fluid state and the winds of conflicting doctrines were ruffling the surface of national politics, Adams gave utterance to opinions on the functions of government which were bound to alienate many of his followers. Entertaining no doubts as to constitutional limitations upon the powers of the National Government, he advocated not only the construction of roads and canals, but the establishment of observatories and a national university. His program included governmental aid to the arts, mechanical and literary, and to the sciences, "ornamental and profound." He was prepared to give encouragement not only to manufacturing but to agriculture and to commerce. Many of these were objects which President Jefferson had recommended to the consideration of Congress in 1806; but whereas he had urged the adoption of amendments to the Constitution which would authorize Congress to provide for roads and canals and education, Adams seemed oblivious to the limitations of the Constitution. In much alarm Jefferson suggested to Madison the desirability of having Virginia adopt a new set of resolutions, bottomed on those of 1798, and directed against the acts for internal improvements. In March, 1826, the general assembly declared that all

the principles of the earlier resolutions applied "with full force against the powers assumed by Congress" in passing acts to protect manufactures and to further internal improvements. That the Administration would meet with opposition in Congress, whatever its program might be, was a foregone conclusion. The only question was whether the diverse and mutually hostile factions which had followed the fortunes of Crawford, Calhoun, and Jackson could coalesce into a consistent opposition. The first test occurred when the Administration proposed the Panama mission.

The overthrow of the authority of Spain in South America had left the way clear for the long-projected union of the republics. Early in the year 1825, the ministers of Mexico, Guatemala, and Colombia waited on Clay to learn whether the United States would accept an invitation to a great council or congress which had been called by the revolutionist Bolívar, now President of Colombia. The project appealed strongly to Clay. A league of young republics in the New World to offset the Holy Alliance in Europe was, as his biographer remarks, "one of those large, generous conceptions well calculated to fascinate his ardent mind." The imagination of the President was not so easily touched: he instructed Clay to inquire more particularly into the purposes of the congress.

The condition of affairs in the countries bordering on the Caribbean Sea — the American Mediterranean — was such, indeed, as to justify extreme caution in dealing with the Latin-American repub-

lics. It was matter of common knowledge that Colombia and Mexico had designs upon Cuba, the last of the Spanish outposts in the New World. So long as Spain continued at war with her old colonies, the United States was bound to be uneasy about the fate of Cuba and Porto Rico. Even if the islands were liberated by the republican armies of Central and South America, they were likely to fall a prey to some European power. The appearance of a French fleet off the coast of Cuba during the summer of 1825 gave point to these not unwarranted apprehensions. It was rumored that Cuba was to be made the basis for an expedition against Mexico in behalf of Spain. This episode prompted Clay to make strong representations to France that the United States could not consent to the occupation of Cuba by any other European power.

When, then, a formal invitation came to participate in the Panama Congress, the Administration determined to seize the occasion to exercise a wholesome restraint by friendly advice upon the assembled delegates of the republics, and at the same time to ascertain their purposes. In asking the Senate to confirm the nomination of two delegates, however, the President voiced his own expectation of what the Congress would be and do, rather than the purposes of Bolívar and his associates. The occasion would be favorable, the President intimated, for the discussion of commercial reciprocity, of neutral rights, and of principles of religious liberty. An alliance with the Latin-American republics was not contemplated. On the contrary, the delegates from

the United States would urge "an agreement between all of the parties represented at the meeting, that each will guard by its own means against the establishment of any future European colony within its borders." At this stage in its evolution the Monroe Doctrine was not understood to include any obligation on the part of the United States to police the territories of the lesser republics of the New World.

The instructions given to the envoys leave no doubt as to the intentions of the Administration. Every possible endeavor was to be made to dissuade Colombia and Mexico from their designs upon Cuba and Porto Rico. The recognition of Hayti as an independent state was to be deprecated. In short, the *status quo* in the Caribbean Sea was to be maintained; and throughout, the congress was to be regarded as a diplomatic conference and in no wise as a convention to constitute a permanent league of republics.

Nevertheless, the opposition in Congress persisted in misrepresenting the President's purposes. It was pointed out that the republics to the south very generally believed that the United States was pledged by Monroe's message to make common cause with them when their independence was threatened. "Are we prepared," asked Hayne, of South Carolina, "to send ministers to the Congress of Panama for the purpose of making effectual this pledge of President Monroe as construed by the present administration and understood by the Spanish-American states?" With greater sincerity Southern Representatives protested against participating

in a congress which proposed to discuss the suppression of the slave trade and the future of Hayti. "Slavery in all its bearings," said Hayne, "is a question of extreme delicacy, concerning which there is but one safe rule either for the States in which it exists or for the Union. It must ever be treated as a domestic question. To foreign governments the language of the United States must be that the question of slavery concerns the peace and safety of our political family, and that we cannot allow it to be discussed." Least of all, he continued, could the United States touch the question of the independence of Hayti in connection with revolutionary governments which had marched to victory under the banner of universal emancipation and which had permitted men of color to command their armies and enter their legislative halls.

In the end the Administration had its way and the nominations were confirmed; but the delay was most unfortunate. On their way to the Isthmus, one of the delegates died, and the other arrived too late to take part in the congress. From the viewpoint of domestic politics, the controversy over the mission was only an incident in the evolution of a party within the bosom of the Democratic party. The animus of the opposition is revealed in the often-quoted remark of Martin Van Buren, who was trying to drill the varied elements in the Senate into a coherent organization: "Yes, they have beaten us by a few votes, after a hard battle; but if they had only taken the other side and refused the mission, we should have had them."

Of far more serious import than this factional opposition in Congress was the resistance which the authorities of Georgia offered to the National Administration in the matter of Indian lands. On March 5, 1825, the Senate ratified the Treaty of Indian Springs with the Creek Indians, which provided for the cession of practically all the lands of the tribe between the Flint and Chattahoochee Rivers. For years the planters of Georgia had coveted these fertile tracts, awaiting with impatience the negotiations of the Federal Government with the reluctant Indians. Although the title to the lands was not to pass to Georgia until September 1, 1826, Governor Troup ordered them to be surveyed with a view to their immediate occupation. Meantime, well-founded charges were current that the treaty had been made by a faction among the Creeks, without the consent of the responsible chiefs. President Adams at once ordered the state authorities to desist from their survey; but the governor replied that Georgia was convinced of the validity of the treaty and fully determined to enter into possession of her own. The tone of the governor's letter was ominous. Nevertheless, the President instituted negotiations for a new treaty. The diplomatic shifts resorted to by the Indian agents in this instance were not above suspicion, but the President seemed to entertain no misgivings, for he assured the Senate that the new Treaty of Washington (January 24, 1826) was the will and deed of "the chiefs of the whole Creek Nation." The grant left the Indians still in possession of some lands west of the Chattahoochee.

The feelings of all loyal Georgians were outraged by the course of the Administration. The legislature protested against the Treaty of Washington as "illegal and unconstitutional," and denounced the President's action as "an instance of dictation and federal supremacy unwarranted by any grant of powers to the General Government." "Georgia owns exclusively the soil and jurisdiction of all the territory within her present chartered and conventional limits," read the resolutions of December 22, 1826. "She has never relinquished said right, either territorial or jurisdictional, to the General Government."

The ebullient governor hardly needed the indorsement of the legislature. He pushed on the surveys to the limits set by the original treaty. But the surveyors soon met with resistance from the Indians; and the Indians appealed to the President. The Secretary of War then notified Troup that the President felt himself compelled to employ all the means under his control to maintain the faith of the nation and to carry the treaty into effect. Governor Troup replied defiantly that the "military character of the menace" was well understood. "You will distinctly understand, therefore, that I feel it my duty to resist to the utmost any military attack. . . . From the first decisive act of hostility, you will be considered and treated as a public enemy, and with less repugnance because you, to whom we might constitutionally have appealed for our defense against invasion, are yourselves the invaders, and, what is more, the unblushing allies of the savages whose course you

have adopted." He at once issued orders to the state military officers to hold the militia in readiness to repel any invasion of the soil of Georgia.

The tension which had now become acute was relieved by the intelligence that the President had ordered the Indian agent to the Creeks to resume negotiations for the cession of the rest of their lands. The governor hastened to point out jubilantly that the President had beaten a retreat. Meantime, the President had laid the whole matter before Congress in a special message. A committee of the House advised the purchase of the rest of the Indian lands, but in the mean time the maintenance of the terms of the Treaty of Washington. A committee of the Senate, however, with Benton as chairman, took an opposite view of the situation, and deprecated any action looking toward the coercion of a sister State. A treaty concluded with the Creeks in November, 1827, fortunately satisfied all parties and put an end to this exciting controversy — a controversy in which the President had played a lone and not very successful hand.

In this same year (1827), another Indian problem of even greater perplexity arose. The Cherokees of northwestern Georgia, who were ruled by a group of intelligent half-breeds, declared themselves one of the sovereign and independent nations of the earth, and drafted a constitution which completely excluded the authority of the State of Georgia. Again, in no uncertain language, Georgia asserted her title to all the lands within her limits, regarding the Indians simply as "tenants at her will"; but before the con-

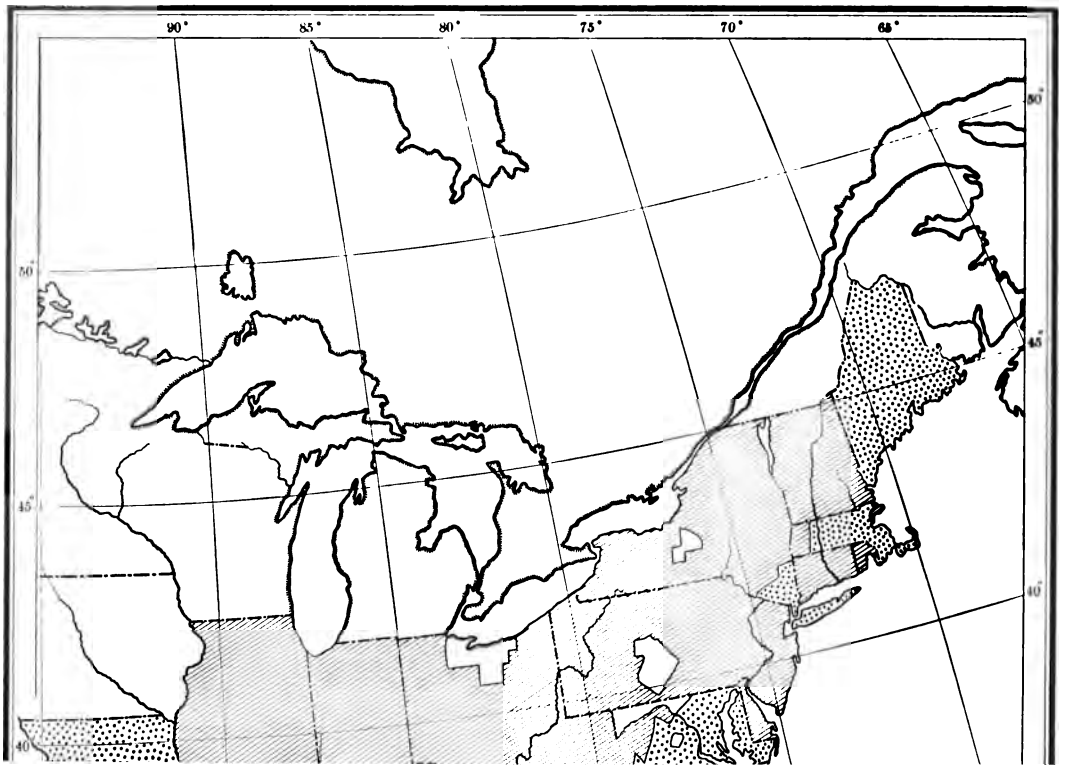
troversy reached an acute stage Adams had surrendered the Presidency to General Andrew Jackson, who had only contempt for Indian rights when they fell athwart the purposes of honest white settlers.

In the midst of these protestations against federal intervention, the legislature of Georgia sounded a note of defiance also in the matter of the tariff. It was "their decided opinion an increase of Tariff duties will and ought to be RESISTED by all legal and constitutional means." Just what should be "the mode of opposition" they would not pretend to say, but for the present they would content themselves with "the peaceable course of remonstrating with Congress." This rather ominous protest was inspired by the demands of certain manufacturers and politicians who had assembled in convention at Harrisburg, Pennsylvania, in the summer of 1827.

The woolen industry had profited least of all those which had been protected by the Tariff of 1824. Not only had the slight advance in rates been offset by the increase of the duty on raw wool, but the effect of English competition in 1825 had been most depressing to the woolen trade. A tariff bill to meet the wishes of the wool-growers and woolen manufacturers had passed the House early in 1827, but had been defeated in the Senate by the casting vote of the Vice-President. The convention at Harrisburg was designed to create a public sentiment in favor of the protected interests and to bring pressure from various sources to bear upon Congress. The failure of the tariff bill in the spring session had impressed upon woolen manufacturers the necessity of securing allies.

The recommendations of the convention at Harrisburg were comprehensive. Higher duties all along the line, from wool to glass, were urged. But that which the promoters of the convention had most at heart was the extension to woolens of the minimum principle already applied to cotton fabrics. According to their demands, the *ad valorem* duty on woolens should range from forty to fifty per cent, assessed on minimum valuations of fifty cents, two dollars and a half, four dollars, and six dollars a yard. That is to say, goods valued at less than fifty cents a yard were to be treated as though they had a value of fifty cents; and all between fifty cents and two dollars and a half, as though they were worth two dollars and a half; and so on — a system which offered a high degree of protection to the cheaper fabrics in each group.

The high hopes of the protectionists were only partially realized. In the following session of Congress, economic interests became badly tangled with political. The President and the greater part of his supporters were protectionists. Indeed, it was openly charged by the opposition that the Harrisburg Convention was a device of the Adams men to promote his reëlection. The opposition, on the other hand, was far from united on the tariff question. The only affinity between Southern planters and their Northern allies in the Middle and Western States was hostility to the Administration. According to Calhoun, who in after years made a frank avowal of his part in the intrigue, the opposition determined to frame a tariff bill with a general high level of duties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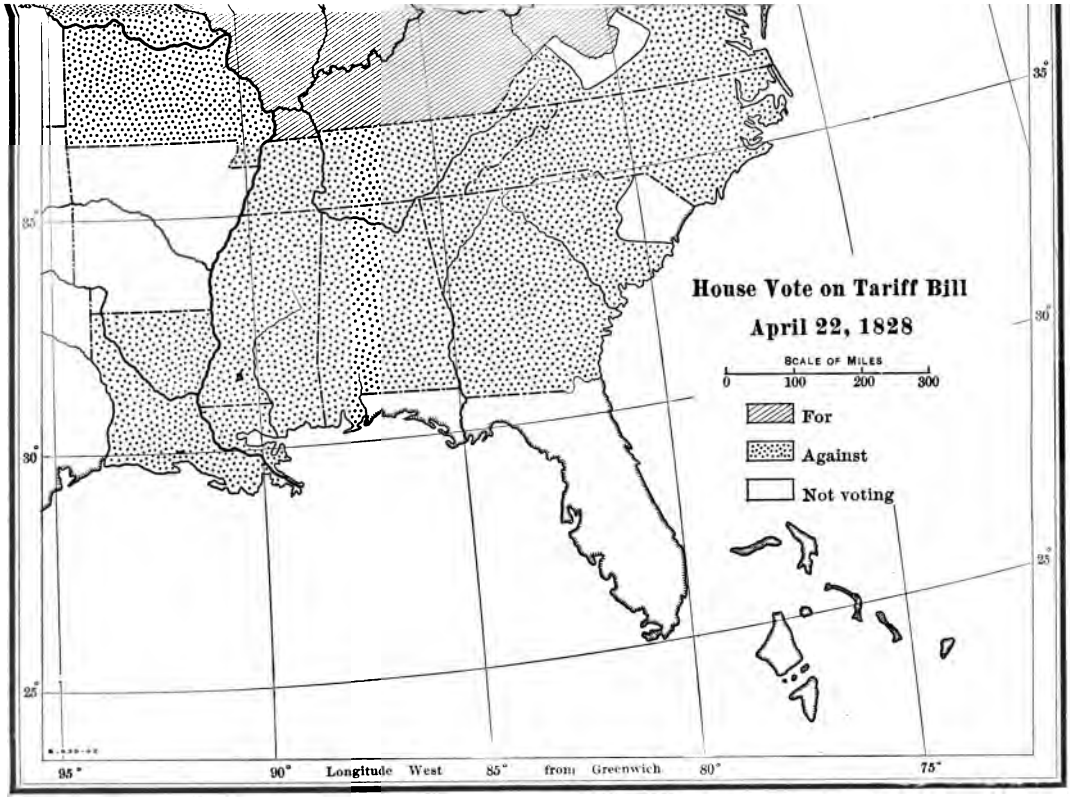
House Vote on Tariff Bill
April 22, 1828
Scale of Miles
0 100 200 300
For
Against
Not voting
35°
30°
25°
95°
90°
85°
80°
75°
Longitude West from Greenwich

to satisfy the Middle and Western States, but to increase the duties on raw material which New England manufacturers needed. All the stanch Jackson men were to unite in forcing this bill to a passage without amendment. At the last moment, however, the Southern group were to part company with their allies and to vote against the bill. The Representatives from New England, and the supporters of the Administration generally, would of course vote against the bill also, and so compass its defeat. The odium would then fall upon the Adams men, while the Jackson men could pose as the only whole-hearted advocates of protection; and, finally, not the least factor in Calhoun's calculations, the South would escape the toils of high protection. There was only one hitch in this cleverly planned game. To the consternation of the plotters, enough New England Representatives swallowed the bitter dose to enact the bill.

The "tariff of abominations" deserves all the abuse which has been heaped upon it. Shapen in political iniquity, it bore upon its face the marks of its origin. High duties for which no one had asked were imposed on certain raw material like pig and bar iron, and hemp, the better quality of which was always in demand and never produced in the United States. Items like the increased duty on molasses and the heavy duty on sail-duck were added to make the bill distasteful to New England. But the woolen industry suffered the most grievous disappointment. Instead of the minimum principle advocated by the Harrisburg Convention, the Act of 1828 established

a minimum of one dollar between the minimal points of fifty cents and two dollars and a half. Whereas the proposed rate would have fixed a prohibitory duty on woolens costing about a dollar a yard, the act allowed only a duty of forty-five per cent. "The dollar minimum," as one of the aggrieved manufacturers put it, "was planted in the very midst of the woolen trade."

Again the Middle States and the States of the Ohio Valley united in support of the protective principle. New England was divided against itself. Political considerations weighed heavily with those New Englanders who like Webster voted for the bill. John Randolph hardly exaggerated when he declared that "the bill referred to manufactures of no sort or kind, except the manufacture of a President of the United States."

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CHAPTER XIX

THE RISE OF NATIONAL SOVEREIGNTY

SHORTLY after the Federal Convention of 1787, a friend remarked to Gouverneur Morris, "You have made a good constitution." "That," replied Morris laconically, "depends on how it is construed!" From Washington to Jackson the process of construing the Constitution had gone on, intermittently by the executive and legislative, steadily by the judiciary. "The judiciary of the United States," wrote Jefferson in 1820, "is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederate fabric. They are constantly construing our constitution from a coördination of a general and a special government, to a general and supreme one alone. They will lay all things at their feet, and they are too well versed in the English law to forget the maxim, '*boni judicis est ampliare jurisdictionem.*'"

Yet as late as 1800 the federal judiciary had pronounced none of those decisions which were to make it so powerful a factor in the assertion and maintenance of national sovereignty. In declining an appointment as Chief Justice, John Jay wrote to President Adams that he had "left the bench perfectly convinced that under a system so defective, it would not obtain the energy, weight, and dignity, which were essential to its affording due support to the

National Government; nor acquire the public confidence and respect which, as the last resort of the justice of the Nation, it should possess."

The uncertainty of the law was in large part responsible for this lack of prestige. "Too great inattention," complained a Boston lawyer, in the *Columbian Centinel* in 1801, "has hitherto prevailed as to the preservation of the decisions of our courts of law. We have neither authorized nor voluntary reporters. Hence we are compelled to the loose and interested recollections of counsel, or to depend wholly on British decisions." The first systematic attempt to secure records of opinions was made by Connecticut in 1785. Four years later, Ephraim Kirby, a printer in Litchfield, issued "the first regular printed law reports in America." This example was followed in other States; and in 1798 the first volume of United States Supreme Court Reports was published by Dallas.

The great period in the history of the Supreme Court coincides with the thirty-four years during which John Marshall held the office of Chief Justice. President John Adams rendered no more lasting service to the Federalist cause than when he appointed this great Virginian to the bench, for Marshall, if not a Federalist of the strictest sect, was a thoroughgoing nationalist. Down to his appointment only six decisions involving constitutional questions of any moment had been handed down; between 1801 and 1835, sixty-two were rendered, of which Marshall wrote thirty-six. The decisions of the court during "the reign of Marshall" fill thirty volumes of the Reports.

Seven hundred and fifty-three cases were taken on appeal to the Supreme Court from the lower federal courts, and in nearly one half of these cases the decisions were reversed.

An American constitutional law did not exist when Marshall took office. Few precedents were available. In some of his important cases Marshall did not cite a single judicial decision. He reached his conclusions by the light of reason. "There, Story," he would say to his associate, "is the law. Now you must find the authorities." In a peculiar sense it is true to say that Marshall both laid the foundations of constitutional law and reared the superstructure, as one of his biographers remarks. But Marshall was ably supported by his colleagues; and he owed much, as he freely admitted, to the arguments of a remarkable body of lawyers of the federal bar. Wirt, Pinkney, and Webster were as truly creators of American constitutional law as the learned justices.

The constitutional importance of the decision of the Supreme Court in *Marbury* v. *Madison* has already been pointed out. In the development of the idea of national sovereignty, the significance of the decision lies in the emphatic assertion that the Supreme Court is the tribunal of last resort in cases involving the constitutionality of acts of Congress.

The first open resistance of a State to federal authority, as asserted by the Supreme Court, occurred in 1809, when the legislature of Pennsylvania interposed its authority to prevent the payment of prize money which had been awarded by a federal

district court to Gideon Olmstead and others for their capture of the sloop Active during the Revolution. All efforts to secure a peaceful settlement of this controversy having failed, the Attorney-General, in behalf of Olmstead, applied to the Supreme Court for a writ of *mandamus*, directing Judge Peters of the district court to enforce his judgment. In granting the writ, Chief Justice Marshall pointed out the gravity of the issue. "If the legislatures of the several States," said he, "may at will annul the judgment of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals." Such a conclusion he emphatically repudiated. Reviewing the history of the case with all its details, he reached the uncompromising conclusion that "the State of Pennsylvania can possess no constitutional right to resist the legal process which may be directed in this cause. . . . A peremptory *mandamus* must be awarded."

Judge Peters issued the writ, but all efforts of the marshal to serve the writ were thwarted by the state militia. The marshal then summoned a *posse comitatus* of two thousand men. Bloodshed seemed imminent; but after an ineffectual appeal to the President, the Pennsylvania authorities gave way and paid over the money. Subsequently the officer commanding the militia and others were indicted, tried, convicted, and sentenced to fine and imprisonment, for resisting the writ of a federal court; but they were pardoned

by the President because "they had acted under a mistaken sense of duty."

In this conflict of authority the National Government won at every point. Even the resolution which the legislature adopted in the heat of the controversy, calling for an amendment to the Constitution which should establish "an impartial tribunal to determine disputes between the General and State Governments," met with no approval from other States. Virginia, soon to be of a very different mind, responded that "a tribunal is already provided . . . to wit: the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid in an enlightened and impartial manner, than any other tribunal which could be erected."

In two notable cases, the Supreme Court affirmed the constitutionality of the Judiciary Act of 1789 and asserted its authority to review and reverse decisions of the state courts when those decisions were adverse to alleged federal rights. The opinion in the first case, that of *Martin* v. *Hunter's Lessee*, in 1816, was written by Joseph Story, of Massachusetts, who had been appointed to a vacancy on the bench by President Madison. Story was reputed to be a Republican, but he disappointed all expectations by becoming a stanch supporter of nationalist doctrines and only second to Marshall in his influence upon the development of American constitutional law.

The case of *Martin* v. *Hunter's Lessee* grew out of the old Fairfax claims which Marshall had rep-

resented as counsel before his appointment to the bench. In 1815, the Supreme Court had reversed the decision of the Court of Appeals of Virginia, and ordered the state court to execute the judgment rendered in the lower state court. The judges of the Court of Appeals, headed by Judge Spencer Roane, a bitter opponent of Marshall, formally announced that they would not obey the *mandamus*, holding that the twenty-fifth section of the Judiciary Act of 1789 — that extending the appellate jurisdiction of the Supreme Court over state tribunals — was unconstitutional. The state-rights elements in Virginia quickly rallied to the support of the judges, and the Supreme Court found itself face to face with an incensed public opinion in the Old Dominion. In no wise daunted by this opposition, the Supreme Court reviewed its position in 1816 and again ordered the execution of its judgment.

Five years later, Chief Justice Marshall rendered a similar decision in the case of *Cohens* v. *Virginia*. The counsel for the Commonwealth had argued that the appellate jurisdiction conferred by the Constitution on the Supreme Court was merely authority to revise the decisions of the inferior courts of the United States. "Congress," it was contended, "is not authorized to make the supreme court or any other court of a State an inferior court. . . . The inferior courts spoken of in the Constitution are manifestly to be held by federal judges." "It is the case, not the court, that gives jurisdiction," replied Marshall. "The courts of the United States can, without question, revise the proceedings of the exec-

utive and legislative authorities of the States, and if they are found to be contrary to the Constitution may declare them to be of no legal validity. Surely the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power."

It was in the course of this decision that Marshall asserted in unmistakable language the sovereignty of the National Government. "The people made the Constitution and the people can unmake it. . . . But this supreme and irresistible power to make or to unmake resides only in the whole body of the people; not in any subdivision of them. The attempts of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated the power of repelling it. . . . The framers of the Constitution were indeed unable to make any provisions which should protect that instrument against a general combination of the States, or of the people for its destruction; and conscious of this inability, they have not made the attempt. But they were able to provide against the operation of measures adopted in any one State, whose tendency might be to arrest the execution of the laws; and this it was the part of wisdom to attempt. We think they have attempted it."

Between these notable Virginia cases was decided, in 1819, the case of *M'Culloch* v. *Maryland*, in which the Chief Justice sustained the constitutionality of the act establishing the National Bank, and declared a state law imposing a tax on a branch of the Bank unconstitutional and void. In the course

of his opinion, which followed much the same line of reasoning that Alexander Hamilton had employed, Marshall stated in classic phraseology the doctrine of liberal construction. Holding that the Constitution was not a code of law, but a document marking out in large characters the powers of government, he sought, among the enumerated powers, not the lesser, but the great substantive, powers necessary to the purposes of the Union. These substantive powers, however, carry with them many incidental (Hamilton said *resulting*) powers, among which a choice may freely be made to achieve the desired and legitimate end. "Let the end be legitimate," said Marshall, "let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." In an earlier decision (*United States* v. *Fisher*, 1804), indeed, Marshall had refused to concede the force of the argument that the Federal Government was clothed only with the powers indispensably necessary to exercise powers expressly granted to it. "Congress must possess the choice of means which are in fact conducive to the exercise of a power granted by the Constitution."

The cumulative effect of these decisions was to provoke a violent reaction in Virginia. Under the pen-name "Algernon Sidney," Judge Roane renewed his attacks upon the Chief Justice in violent and at times offensive language. "The judgment before us," he declared, referring to the case of

Cohens v. *Virginia*, "will not be less disastrous in its consequences, than any of these memorable judgments [of the time of Charles I]. It completely negatives the idea, that the American States have a real existence, or are to be considered, in any sense, as sovereign and independent States." It seemed to Jefferson that the powerful arguments of Roane completely "pulverized" every word which had been uttered by John Marshall. John Taylor of Caroline, however, was the philosophical exponent of this reactionary movement. In his *Construction Construed* (1820), *Tyranny Unmasked* (1822), and *New Views of the Constitution* (1823), he pointed out the manifest tendency of the decisions of the Supreme Court and suggested the "state veto" as the remedy against usurpation of power by the Supreme Court or by Congress. The legislature of Virginia indorsed an amendment to the Constitution drafted by Judge Roane which would have limited the jurisdiction of the federal courts, where the rights of the States were concerned, and which would have forbidden appeals from the courts of a State to any court of the United States. Beyond such remonstrances and protests, however, public opinion in Virginia was not prepared to go at this time.

The judges of the Supreme Court could not remain indifferent to these assaults. "If, indeed, the Judiciary is to be destroyed," wrote Story, "I should be glad to have the decisive blow now struck, while I am young, and can return to my profession and earn an honest livelihood." But he added, "For the Judges of the Supreme Court there is but one

course to pursue. That is, to do their duty firmly and honestly, according to their best judgments."

It was in this spirit that the court rendered judgment in the case of *Green* v. *Biddle* (1823), which gave deep offense to the people of Kentucky by setting aside as unconstitutional the so-called "Occupying Claimant Laws." The remonstrance of the legislature was all the more bitter because the decision had been rendered by a bench of only four judges, one of whom dissented from the majority opinion. The resolutions of the legislature demanded a reorganization of the court in such wise that the concurrence of at least two thirds of the judges should be necessary in an opinion affecting the validity of state laws. And when Congress made no response, the lower House called upon the governor to express his opinion "whether it may be advisable to call forth the physical power of the State to resist the execution of the decisions of the court, or in what manner the mandates of said court should be met by disobedience." But Kentucky like Virginia kept well within the legal limits of petition and remonstrance.

In Ohio, also, there was an ominous spirit of resistance to the force of precedent. Notwithstanding the decision of the court in the case of *M'Culloch* v. *Maryland*, the general assembly of that State not only enacted a law to tax the local branch of the National Bank, but actually seized the amount of the tax. Suit was thereupon brought against the state auditor; and in spite of the vigorous remonstrance of the legislature, the Supreme Court again

sustained the constitutionality of the Bank and declared the state tax unconstitutional. The State was ultimately obliged to make restitution of the funds of the Bank.

Meantime, the national judiciary had contributed to the expansion of the Constitution in notable ways;

sometimes by affirming the constitutionality of powers exercised by the President or Congress, and at other times by narrowing the limits of state authority. In the case of the *American Insurance Company* v. *Canter*, twenty-five years after the acquisition of Louisiana, Marshall affirmed the constitutionality

of the treaty which had so aroused Jefferson's misgivings. "The Constitution," said the Chief Justice, "confers absolutely on the Government of the Union the powers of making war and of making treaties; consequently, that Government possesses the power of acquiring territory, either by conquest or by treaty."

In two instances, on the other hand, the Supreme Court gave an interpretation of the "obligation of contracts" clause of the Constitution which seriously limited the powers of the States. In the case of *Fletcher* v. *Peck* (1810), the court declared unconstitutional an act of the legislature of Georgia which attempted to revoke the notorious Yazoo land grants of 1795. A grant was held to be a contract within the meaning of the Constitution; and the court found no adequate ground for exempting such contracts from the prohibition of the Constitution.

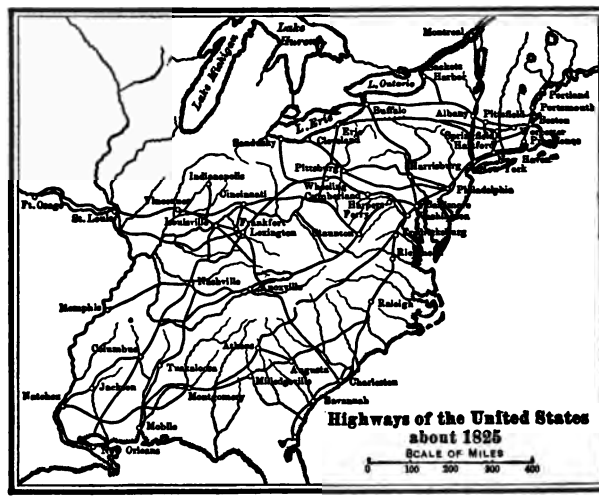
Far-reaching in its implication, also, was the second instance, when the Supreme Court held unconstitutional and void the acts of the New Hampshire legislature which amended the charter granted by the Crown to Dartmouth College in 1769. Arguing as counsel for the college, of which he was an honored graduate, Daniel Webster held that the charter of a private corporation was a contract which might not be impaired by an act of a state legislature. Chief Justice Marshall only restated and amplified Webster's argument, when he rendered the opinion of the court and declared that New Hampshire might not by law impair the charter of Dartmouth College. To the argument of the counsel for the Common-

wealth, contending that the framers of the Constitution never contemplated such a broad use of the word "contract," Marshall replied that it was not enough to say this particular use of the word was not in the mind of the Convention when the article was adopted. "It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception."

The immense significance of this decision was not immediately apparent. The peculiar immunity which it gave to private property could not be appreciated until the rise of corporations with concentrated capital. Not even the Chief Justice foresaw that the guaranty of inviolability which he had thrown about a private educational corporation would be demanded with equal right by the great business corporations of the succeeding era.

In the famous case of *Gibbons* v. *Ogden* (1824), the Supreme Court gave an interpretation of the commerce clause of the Constitution which also had a profound effect upon subsequent history. In the course of its decision the court declared unconstitutional a law of the State of New York which had granted an exclusive right to operate steamboats in the waters of New York. The regulation of commerce, the court held, had been given exclusively to Congress, and "commerce" as used in the Constitution comprehended not merely traffic and intercourse but also navigation. The power to regulate was regarded as a unit. In regulating commerce with foreign nations, the power of Congress does not stop at

the jurisdictional lines of the several States. "If a foreign voyage may commence or terminate at a port within a State, then the power of Congress may be exercised within a State." Similarly, the court reasoned that commerce "among the States" cannot stop at the external boundary of each State. "Com-



merce among the States must of necessity be commerce with the States." In short, while expressly disclaiming that Congress had the power to regulate the internal commerce of a State, the court asserted the complete control of Congress over interstate commerce so far as navigation was concerned. The deeper significance of this interpretation of the commerce clause appeared only when railroads began to span the continent and the jurisdictional lines of

States were crossed and re-crossed by an ever-increasing volume of trade.

Twenty-five years had wrought a vast change in the position of the national judiciary in the American constitutional system. "It is now seen on every hand," wrote Attorney-General Wirt, urging the appointment of Chancellor Kent to a vacancy on the Supreme Court bench, "that the functions to be performed by the Supreme Court of the United States are among the most difficult and perilous which are to be performed under the Constitution. They demand the loftiest range of talents and learning and a soul of Roman purity and firmness. The questions which come before them frequently involve the fate of the Constitution, the happiness of the whole Nation, and even its peace as it concerns other nations." In the light of the decisions reviewed, the nationalizing tendency of the federal judiciary is unmistakable. But a constitutional reaction had set in; and even while John Marshall was setting forth the doctrine of national sovereignty in its most uncompromising form, John C. Calhoun in the quiet of his estate in South Carolina was elaborating a defense of state rights on premises which the great Chief Justice had combated for a quarter of a century.

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